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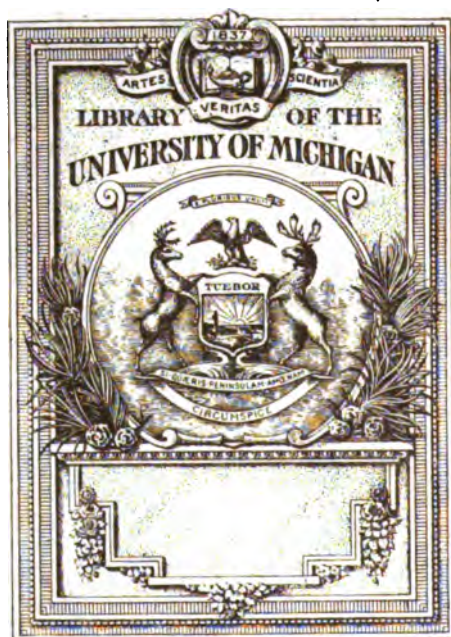
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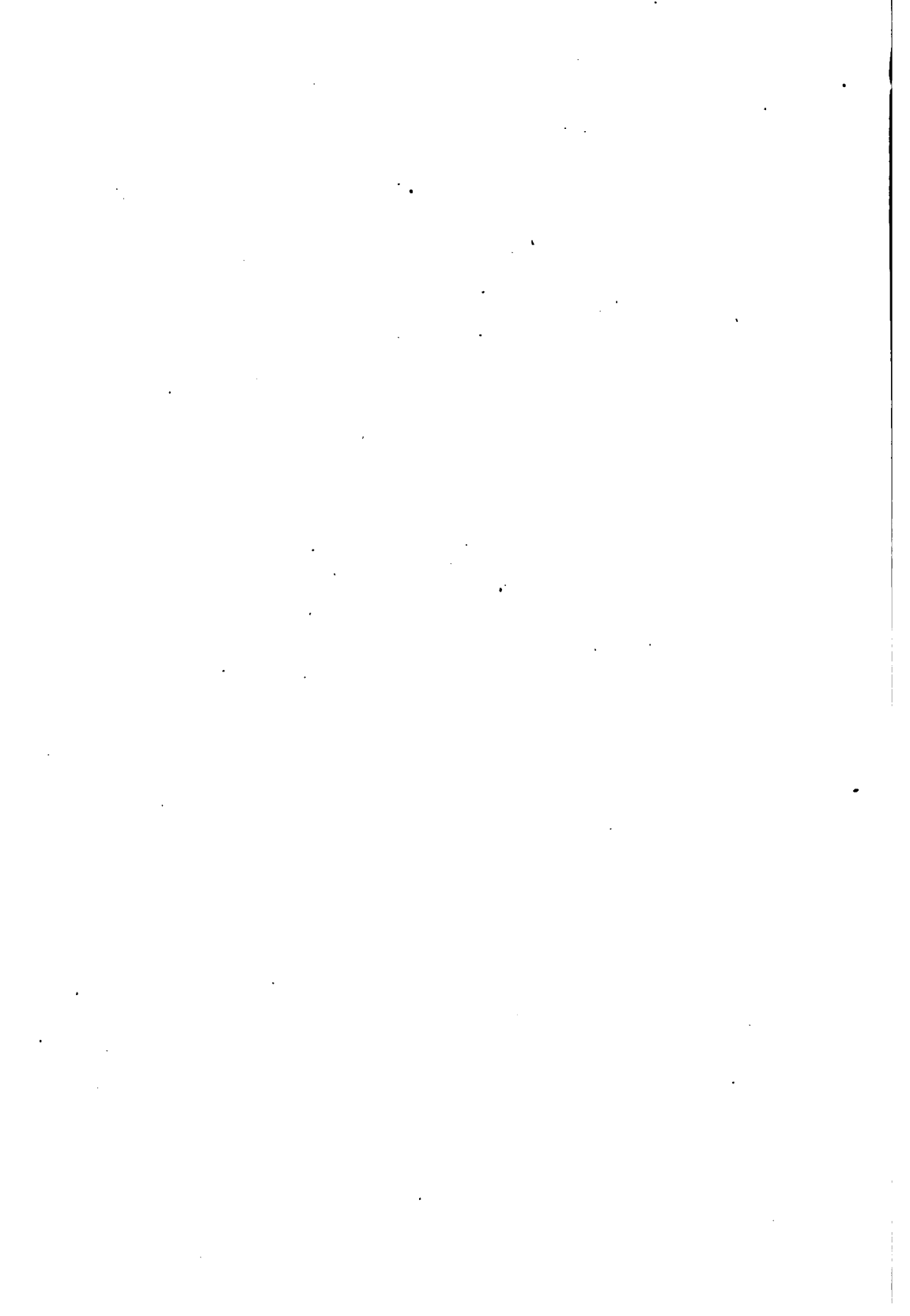
THE GIFT OF
Mich. Attorney General

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ANNUAL REPORT

OF THE

Michigan

ATTORNEY GENERAL *Isaiah*

OF THE

STATE OF MICHIGAN

FOR THE

FISCAL YEAR ENDING JUNE 30, A. D. 1916.

GRANT FELLOWS

ATTORNEY GENERAL



BY AUTHORITY

LANSING, MICHIGAN
WYNKOOP HALLENBECK CRAWFORD CO., STATE PRINTERS
1916

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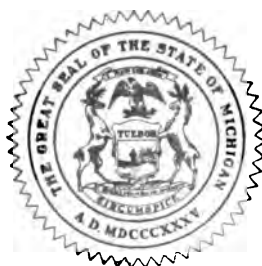
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ANNUAL REPORT
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OF THE
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FOR THE

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ATTORNEY GENERAL'S OFFICE.

GRANT FELLOWS, Attorney General.
ANDREW B. DOUGHERTY, Deputy Attorney General.

ASSISTANTS.

DAVID H. CROWLEY,
SAMUEL D. PEPPER,
LELAND W. CARR,
FREDERICK CAREW MARTINDALE,
CLARE RETAN,
JAMES A. GREENE, (a)
DUANE H. MOSIER, (b)

CLERKS.

ALBERT H. GRAHAM,
HENRI G. CASSEY, (c)

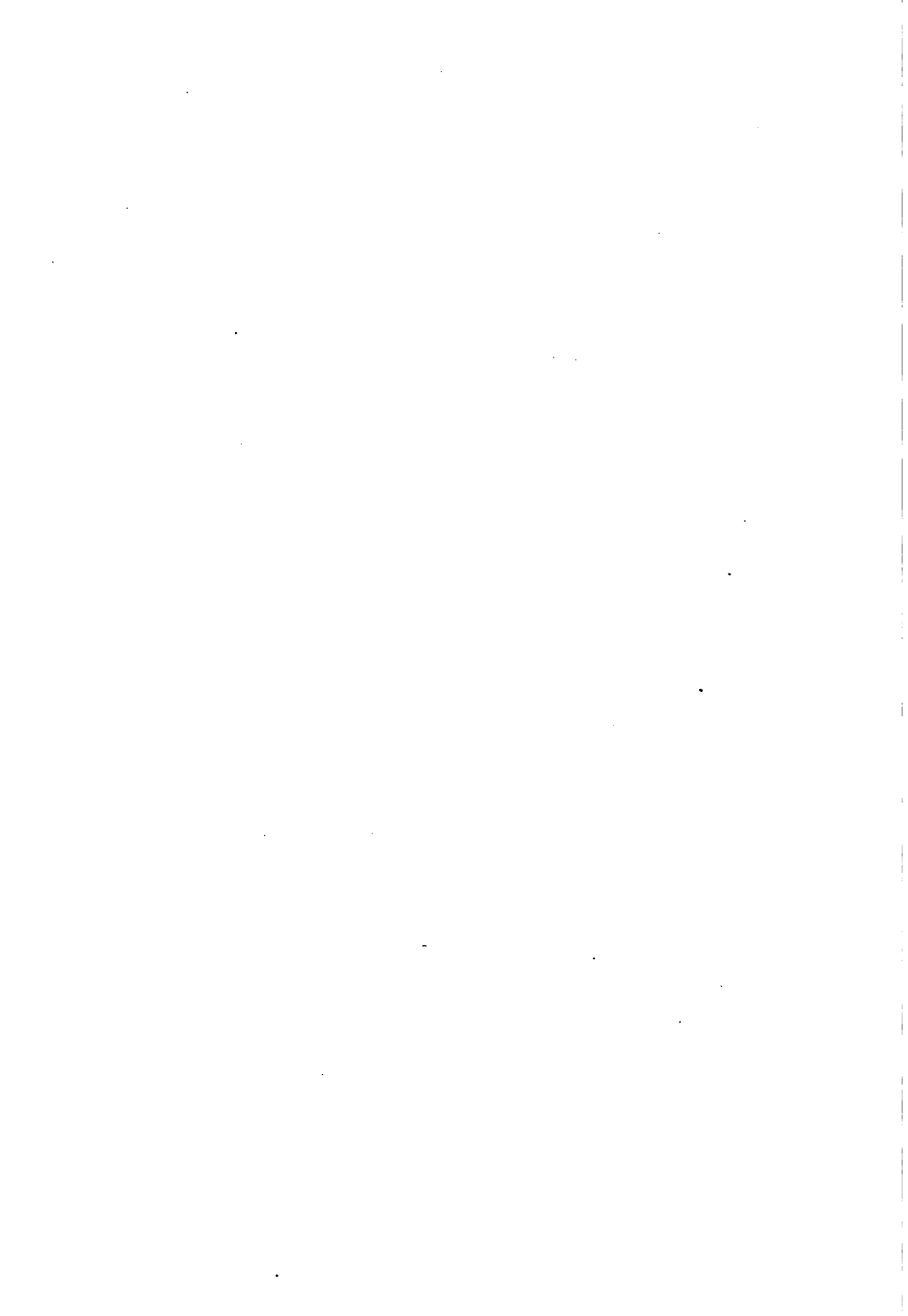
STENOGRAPHERS.

ALICE M. PIPER,
NEVA M. VANCE,
MARGARET KINMOND,

MESSENGER.

HORACE E. CRAIG.

- (a) Resigned Jan. 1, 1916.**
- (b) Appointed Jan. 25, 1916.**
- (c) Died Jan. 27, 1916.**



ATTORNEYS GENERAL OF THE STATE OF MICHIGAN SINCE 1836.

APPOINTED.

DANIEL LEROY.....	July 18th, 1836-1837
PETER MOREY.....	March 21st. 1837-1841
ZEPHANIAH PLATT.....	March 4th, 1841-1843
ELON FARNSWORTH.....	March 9th, 1843-1845
HENRY N. WALKER.....	March 24th, 1845-1847
EDWARD MUNDY.....	March 12th, 1847-1848
GEORGE V. N. LOTHROP.....	April 3rd, 1848-1850

ELECTED.

WILLIAM HALE.....	1851-1854
JACOB M. HOWARD.....	1855-1860
CHARLES UPSON.....	1861-1864
ALBERT WILLIAMS.....	1865-1866
WILLIAM L. STOUGHTON.....	1867-1868
DWIGHT MAY.....	1869-1872
BYRON D. BALL (a).....	1873-1874
ISAAC MARSTON.....	April 1st, 1874-1874
ANDREW J. SMITH.....	1875-1876
OTTO KIRCHNER.....	1877-1880
JACOB J. VAN RIPER.....	1881-1884
MOSES TAGGERT.....	1885-1888
STEPHEN V. R. TROWBRIDGE (b).....	1889-1890
BENJAMIN W. HUSTON.....	March 25th, 1890-1890
ADOLPHUS A. ELLIS.....	1891-1894
FRED A. MAYNARD.....	1895-1898
HORACE M. OREN.....	1899-1902
CHARLES A. BLAIR.....	1903-1904
JOHN E. BIRD (c).....	1905-1910
FRANZ C. KUHN (d).....	June 7th, 1910-1912
ROGER I. WYKES.....	September 6th.1912-1912
GRANT FELLOWS.....	1913-1916

(a) resigned April 1st, 1874. Isaac Marston appointed to fill vacancy.

(b) resigned March 25th, 1890. Benjamin W. Huston appointed to fill vacancy.

(c) resigned June 6th, 1910. Franz C. Kuhn appointed to fill vacancy.

(d) resigned September 6th, 1912. Roger I. Wykes appointed to fill vacancy.

ANNUAL REPORT 1916

STATE OF MICHIGAN,
Attorney General's Office,
July 1st, 1916.

To the Legislature of the State of Michigan:

In compliance with the law I have the honor herewith to present the annual report of the business of this Department for the fiscal year ending June 30th, 1916, including official opinions and an abstract of the official reports of the Prosecuting Attorneys of the counties of the State, showing the number of prosecutions, convictions, acquittals, etc.

Four indexes are included: a "Table of Cases" an "Index of Names of Opinions," "Subjects of Opinions," and "General Index to Report."

The various matters contained in this Report are arranged as Schedules "A" to "S" inclusive and are classified as follows:

SCHEDULE A.—Statement of criminal cases, habeas corpus cases, and requisitions.

SCHEDULE B.—Statement of mandamus, certiorari and miscellaneous cases.

SCHEDULE C.—Statement of Quo Warranto cases.

SCHEDULE D.—Statement of Chancery cases in State courts and cases in Equity in United States Courts.

SCHEDULE E.—Statement of proceedings for the collection of Escheated Estates.

SCHEDULE F.—Statement of Inheritance Tax proceedings.

SCHEDULE G.—Statement of proceedings relative to insane persons confined in State hospitals containing: (a) statement of money collected and paid to the State, through the efforts of attorney general, with the co-operation of medical superintendents of the various hospitals, auditor general and judges of probate, as re-imbursement to the state for the support of certain insane persons in State hospitals, (b) statement of status of proceedings for reimbursement.

SCHEDULE H.—Statement of Assumpsit cases, ejectment and removal cases, trespass on the case proceedings and miscellaneous cases.

SCHEDULE I.—Statement showing amount received from various telephone and railroad companies, etc., in delinquent taxes; statement of amounts recovered as reimbursements for "costs of suits," and also refundings on costs of suits for the year ending June 30, 1916.

SCHEDULE J.—List of insurance companies whose articles of association, amendments to articles of association, etc., have been approved; and statement of the approval fees received and paid to state treasurer.

SCHEDULE K.—Summary statement covering, approximately, all amounts collected and paid to the State through the Attorney General, during the fiscal year ending June 30, 1916.

SCHEDULE L.—Official opinions of the Attorney General.

SCHEDULE M.—Abstract of the semi-annual reports of the prosecuting attorneys for the fiscal year ending June 30, 1916.

SCHEDULE N. Recapitulation of the semi-annual reports of the prosecuting attorneys for the fiscal year ending June 30th, 1916.

SCHEDULE O.—List of Prosecuting Attorneys, in Office, June 30, 1916, with names of county seats and postoffice addresses.

SCHEDULE P.—Index—Table of cases.

SCHEDULE Q.—Index of names of opinions.

SCHEDULE R.—Index to subjects of opinions.

SCHEDULE S.—Index—General index to report.

Respectfully submitted,

GRANT FELLOWS,
Attorney General.

SCHEDULE "A."**Statement of criminal cases and habeas corpus cases.**

CRIMINAL CASES DISPOSED OF-Supreme Court.

People vs. Charles L. Johnson. No. 25,866. Error to Superior Court of Grand Rapids. Obtaining money under false pretenses. November 5th, 1914, submitted. February 26, 1916, reversed and respondent discharged. 22 D. L. N., 1281.

People vs. Morris Atwood. No. 26,400. Exceptions from Ottawa Circuit. Manslaughter. April 22, 1915, submitted. September 28, 1915, affirmed. 22 D. L. N., page 853.

People vs. Ira B. Gage. No. 26540. Exceptions from Cass Circuit. Embezzlement. June 17, 1915, submitted. December 21, 1915, reversed and new trial. 22 D. L. N., page 1129.

People vs. George Eagle. No. 26542. Writ of error from Alpena Circuit. Larceny. October 28, 1915, submitted. December 21, 1915, affirmed. 22 D. L. N., page 980.

People vs. Charles Dixon. No. 26,660. Exceptions from Ionia Circuit. Keeping moving picture show open on Sunday. April 23, 1915, submitted. September 29, 1915, reversed and respondent discharged. 22 D. L. N., page 830.

People vs. Lafayette R. Coston. No. 26,581. Writ of error from Muskegon Circuit. Assault with intent to commit rape. June 17, 1915, submitted. July 23, 1915, reversed and new trial. 22 D. L. N., page 735.

People vs. George H. Lumley. No. 26,716. Exceptions from Jackson Circuit. Violation of liquor law. October 28th, 1915, submitted. December 22nd, 1915, affirmed. 22 D. L. N., page 1078.

People vs. Albert Schelske. No. 26,742. Writ of error to Van Buren Circuit. Abandonment. June 17, 1915, submitted. July 23, 1915, affirmed. 22 D. L. N., page 727.

People vs. George Wintermute. No. 26,754. Writ of error to Sanilac Circuit. Violation local option law. Defendant serving time.

People vs. Jacob Gansley. No. 26,794. Exceptions before sentence from Ingham Circuit. Violation of corrupt practice act. October 28,

1915, submitted. June 1, 1916, conviction of defendant affirmed. 23 D. L. N., page 333.

People vs. Rose Plummer. No. 26,819. Exceptions from Ingham Circuit. Violation of liquor law. October 28, 1915, submitted. December 21, 1915, exceptions overruled. 22 D. L. N., 1188.

People vs. Dennis Breen and Robert McKnight. No. 26,868. Writ of error Wayne Circuit. Breaking and entering. April 13, 1916, submitted. June 1, 1916, affirmed. 23 D. L. N., 403.

People vs. Carl Dehn. No. 26,942. Writ of error Bay Circuit. Violation of Act 151, P. A. 1913. October 28, 1915, submitted. January 3, 1916, affirmed and remanded. 22 D. L. N., page 1259.

People vs. Anton Palasz. No. 26,954. Recorder's Court of Detroit. Non-payment of liquor tax. April 13, 1916, submitted. June 1, 1916, affirmed. 23 D. L. N., page 267.

People vs. Cesare Federighi. No. 27,192. Writ of error Berrien Circuit. Violation of pure food law. April 14, 1916, submitted. June 8, 1916, reversed. 23 D. L. N., page 354.

People vs. Tom Curran. No. 27,232. Exceptions from Calhoun Circuit. Violation of the liquor law. April 14, 1916, submitted. June 1, 1916, affirmed. 23 D. L. N., page 275.

CRIMINAL CASES PENDING-Supreme Court.

People vs. Vladimirus Maczulski. No. 26,749. Writ of error issued to Recorder's Court, Detroit. Misrepresentation. April 13, 1916, submitted.

People vs. Harold E. Winney. No. 26,778. Writ of error to Jackson Circuit. Murder in first degree.

People vs. Marion E. Blair. No. 26,815. Exceptions from Jackson Circuit. Violation of Act 183, P. A. 1913. October 28, 1915, submitted.

People vs. Frank B. Lay, Jr. No. 27,036. Exceptions before sentence, Kalamazoo Circuit. Embezzlement. April 14, 1916, submitted.

People vs. George T. Lay. No. 27,079. Exceptions before sentence, Kalamazoo Circuit. Embezzlement. April 14, 1916, submitted.

People vs. John Lahnala. No. 27,107. Writ of error Houghton Circuit. Murder first degree. June 26, 1916, submitted.

People vs. John Turton. No. 27,123. Exceptions before sentence, Recorder's Court of Detroit. Seduction. June 15, 1916, submitted.

People vs. Charles Kimbrough. No. 27,137. Writ of error to Saginaw Circuit. Murder first degree. April 13, 1916, submitted.

People vs. Harvey Watters. No. 27,221. Error to Alger Circuit. Violation of city ordinance. June 16, 1916, submitted.

People vs. Carrie May Cutler. No. 27,249. Writ of error to Berrien Circuit. Murder second degree. June 15, 1916, submitted.

People vs. J. Alton Watson. No. 27,263. Exceptions before sentence, Superior Court of Grand Rapids. Violation of medical law. June 15, 1916, submitted.

People vs. Glen Smith. No. 27,270. Exceptions before sentence, Charlevoix Circuit. Rape. June 15, 1916, submitted.

People vs. Elmer Andre. No. 27,288. Writ of error to Benzie Circuit. Assault and battery.

People vs. James A. Humphrey. No. 27,359. Exceptions before sentence, Ingham Circuit. Violation local option law.

People vs. Theodore De Meaux. No. 27,371. Writ of error Ingham Circuit. Resisting an officer.

People vs. Arthur B. Eaton. No. 27,395. Writ of error to Recorder's Court, Detroit.

HABEAS CORPUS CASES DISPOSED OF-Supreme Court.

Bert Andrews vs. Robert E. Ellsworth. Petition for writ of habeas corpus. No. 26,465. January 21, 1915, submitted. February 4, 1916, reversed. 22 D. L. N., page 1269.

In the Matter of George E. Hamilton. No. 26,765. Petition for writ of habeas corpus. June 8, 1915, submitted. October 29, 1915, petitioner remanded. 22 D. L. N., page 943.

CRIMINAL CASES DISPOSED OF-Supreme Court U. S.

Leroy Brazee vs. People. No. 878. Violation of labor law. Writ of error from Michigan Supreme Court. April 6, 1916, submitted. May 22, 1916, affirmed.

HABEAS CORPUS CASES DISPOSED OF-Circuit Courts.

In the matter of the petition of Albert W. Black for writ of habeas corpus. February 16, 1916, Order by Judge Sharp dismissing petitioner.

In the matter of the petition of Thomas F. Robinson for writ of habeas corpus. February 16, 1916, Order by Judge Sharp dismissing petitioner.

In the matter of the petition of John R. Searle for writ of habeas corpus. February 16, 1916, Order by Judge Sharp dismissing petitioner.

In the matter of the petition of Howard M. Belknap for writ of habeas corpus. February 16, 1916, Order by Judge Sharp dismissing petitioner.

In the matter of the petition of Effie M. Bair for writ of habeas corpus. June 26, 1916, hearing held and court took matter under advisement.

Applications for requisitions for the following named persons have been approved during the current year.

TABLE 1.

Names.	Offense charged.	State making demand.
Anna Smith	Receiving stolen property	Illinois.
Walter Mitchell	Assault, intent to murder	Illinois.
H. G. McFarland	Embezzlement	Missouri.
Louis A. Oliver	Grand larceny	Minnesota.
Charles L. Haynes	Bigamy	Maryland.
Tony Capoma	Larceny	Illinois.
Edward Aaron	Confidence game	Illinois.
J. Luther Risk	Embezzlement	North Dakota.
Wm. A. Lippard, alias George D. Cockran	Larceny	Iowa.
Joe Greenstein	Pocket picking	Ohio.
Marion League	Rape	Illinois.
Charles Chanter	Non-support of minor child	Ohio.
William Epps	Murder	Illinois.
Ike Dorf	Larceny	Illinois.
R. J. O'Connor	Larceny	Illinois.
Ed Kelly, alias Marshall	Robbery	Illinois.
Ernest B. Jefferies	Child abandonment	New York.
Thomas Malone	Larceny	Massachusetts.
Louis Finkelstein	Pocket picking	Ohio.
George Walker	Desertion	Iowa.
Harry Trythall	Removing mortgaged property	Wisconsin.
Frank E. Conant	Abandonment	Wisconsin.
Michael Lindway, alias Michlowics, Janocs, Mahone	Murder, second degree	Ohio.
Eddie Manion, alias Will Manion	Breaking into store house	Kentucky.
Andrew Isenhour	Non-support	Illinois.
Antoin Jagmin	False pretense	Maryland.
Ralph Nadel	Larceny and receiving stolen goods	Illinois.
Harry Dewey	Forgery	Ohio.
James Stephenson	Non-support of family	Illinois.
Robert Carville	Defrauding inn-keeper	Illinois.
Rexford W. Scott	Non-support of children	Indiana.
Charles C. Holt	Removing mortgaged property	North Dakota.
Joseph Boyack	Larceny	Illinois.
Edward Koehn	Non-support of minor child	Ohio.
Jo Kucasi, alias Joe Kucasi, alias Joseph Kucasi, alias Joseph Kucsa, Jake Kairis	Horse stealing	Illinois.
R. D. Dewey	Forgery	Wisconsin.
William Swanon	Burglary and larceny	Missouri.
Frederick M. Black	False pretense	Indiana.
Christian Kreiger	Grand larceny	North Dakota.
Nathan Greenfeld	Disposing of mortgaged property	Texas.
Otto Gebhardt	Non-support of minor child	Ohio.
George Roy Davidson	Grand larceny	California.
Alex Cisbarowski	Burglary	Illinois.
C. F. Thompson	Conspiring with intent to defraud	Florida.
Alonso Elliott	Child abandonment	Ohio.
William Bollenbacher	Non-support of child	Ohio.
John Donk	Abandonment of child	New York.
Harry Kuehnan	Forgery	Ohio.
Arthur Wheat	Forgery and grand larceny	Kansas.
Sam Rosner	Warden's warrant	New York.

TABLE 1.

Names.	Offense charged.	State making demand.
Glen M. Ghormley.....	Forgery.....	Illinois.
Clyde Coon.....	Housebreaking, larceny.....	Kentucky.
John E. Crawford.....	Publishing and circulating obscene literature.....	Ohio.
Max Draggisick.....	False pretenses.....	Missouri.
Joseph Scossafava.....	Violation of parole.....	New York.
James H. Brazier.....	Abandonment and non-support.....	Wisconsin.
Adolph W. Koehler.....	Bigamy.....	Illinois.
Barney Smith.....	Pocket picking.....	Ohio.
John Penn.....	Non-support of minor child.....	Ohio.
Bernard Sutter.....	Non-support of minor child.....	Ohio.
Harry Salkin, alias Harry Strausberg.....	Assault 1st and 2nd degrees.....	New York.
Leslie Neal.....	Assault with intent to murder.....	Tennessee.
Walter A. Sadler.....	Grand larceny, 2nd degree.....	Minnesota.
Archibald D. Sullivan.....	Larceny.....	Massachusetts.
Mammoth Khedar.....	Assault in first degree.....	New York.
W. Charles Smith.....	Larceny as bailee.....	Pennsylvania.
W. Charles Smith.....	Larceny as employee.....	Pennsylvania.
Ben Newman.....	Escaping from state penitentiary.....	Mississippi.
Leon A. Taylor.....	Non-support.....	Ohio.
Louis Young.....	Abandonment of child.....	Ohio.
Harold L. Smith.....	Issuing check to defraud.....	Ohio.
J. R. Joyce.....	Burglary and larceny.....	Ohio.
Theodore N. Reynolds.....	Larceny.....	Illinois.
Robert W. Jones.....	Non-support of family.....	Illinois.
Anthony Mauss.....	Abandonment of wife and child.....	Illinois.
Albert Williams.....	Murder.....	Georgia.

Requisitions for the following named persons have been examined and approved during the current year.

TABLE 2.

Name of person.	County demanding.	Offense charged.	State upon which demand made.
Harry Allen.....	Wayne.....	Larceny of railroad ticket.....	California.
Nick Stumpf.....	Washtenaw.....	Larceny from dwelling house in day time.....	North Dakota.
Frank Rabbell, alias Frank Nelson, alias Duref Labar.....	Calhoun.....	Fraudulent embezzlement, removal, concealment and disposal of contract goods.....	Ohio.
William H. McCherry.....	Wayne.....	Obtaining money by false pretenses.....	New York.
Jay Rodman.....	Genesee.....	Larceny of \$280.00.....	New York.
George A. Chenet.....	Wayne.....	Grand larceny.....	New York.
Bernard Latus.....	Berrien.....	Obtaining money by false pretenses.....	Wisconsin.
Charles I. Puchanan.....	Berrien.....	Forgery.....	Illinois.
Frank H. Smith.....	Wayne.....	Larceny of automobile.....	New York.
Herbert A. Kline.....	Calhoun.....	Embezzlement, removal and concealment.....	Minnesota.
Joseph Kirk, alias Joseph Moga.....	Wayne.....	Abandonment of wife and child.....	New York.
Sumner P. Hinckley.....	Ingham.....	Forgery.....	Illinois.
Benjamin Vallmont.....	Monroe.....	Desertion and abandonment.....	Illinois.
Harry Zulch alias Zimmerman, Emily Zulch, Floyd Widdle, Herbert McCaffery.....	Houghton.....	Doing business under fictitious name.....	Wyoming.
Harry Zulch alias Zimmerman, Emily Zulch, Floyd Widdle and Herbert McCaffery.....	Houghton.....	Gross fraud.....	Wyoming.
Edwin F. Churchill.....	Wayne.....	Embezzlement.....	Washington.
Herbert Kyser alias Jack O'Neil alias Burt Darfils.....	Saginaw.....	Statutory rape.....	W. Virginia.
Frank St. Clair.....	Calhoun.....	Larceny from person.....	Minnesota.
Roy Adams.....	Lenawee.....	Assault with intent to harm.....	New York.
John Hay.....	Ottawa.....	Obtaining money false pretense.....	Illinois.
Henry Francisco.....	Emmett.....	Rape.....	Wisconsin.
Henry J. Weiss alias Henry J. Wilson.....	Houghton.....	Doing business under false name.....	New Jersey.
Henry J. Weiss alias Henry J. Wilson.....	Houghton.....	Conspiring to cheat.....	New Jersey.
John Guy and Floyd Speth alias Walter Harrington.....	Wayne.....	Grand larceny.....	New York.
Nathan Corrigan.....	Wayne.....	Murder.....	New Jersey.
Ora Perent.....	Wayne.....	Assault, intent to rob.....	Ohio.
Leon C. Ballard.....	Lenawee.....	Larceny.....	New York.
Arthur Zira.....	Wayne.....	Abandonment wife and children.....	New York.
Louis Trais.....	Wayne.....	Larceny.....	New York.
Henry M. Dearing.....	Calhoun.....	Forgery.....	Kansas.
Rex W. Slack.....	Wayne.....	Embezzlement.....	California.
Burl Cecil Seotfield.....	Shiawassee.....	Desertion of children.....	Illinois.
W. J. Miller.....	Wayne.....	Embezzlement.....	New York.
Berlin A. Murray.....	Muskegon.....	Desertion of wife and child.....	Indiana.
Frank L. Arn strong.....	Washtenaw.....	Embezzlement.....	New York.
William Pellon alias William Miller.....	Saginaw.....	Burglary.....	Kansas.
Hume H. West.....	Wayne.....	Larceny by conversion.....	Georgia.
Christ Dingfelder.....	Wayne.....	Forgery.....	Pennsylvania.
James Smith.....	Kalamazoo.....	Entering dwelling.....	Ohio.
Paul C. Morton.....	Van Buren.....	Forgery.....	Alabama.
William DeBerge.....	Van Buren.....	Obtaining money by false pretenses.....	Illinois.
Wilson F. Crowell.....	Kent.....	Wife desertion.....	New Jersey.
D. Clyde Duffee.....	Ingham.....	Violation of Liquor Act.....	Indiana.
William Sullivan.....	Delta.....	Rape.....	Minnesota.
Jacob Michael.....	Wayne.....	Abandonment of wife and children.....	New York.

Name of person.	County demanding.	Offense charged.	State upon which demand made.
Thaddeus S. Conley	Berrien	Bigamy	New York.
John B. Trombley	Gogebic	Rape	Illinois.
James J. Britt	Wayne	Grand larceny	D. of C.
Charles B. Farah	Wayne	Abandonment wife and children	Indiana.
Bernard F. Sullivan	Saginaw	Forgery	Illinois.
Thomas Morsaw	Allegan	Burglary	Kansas.
Julius Goodman	Wayne	Larceny by conversion	Massachusetts.
Thomas Topash	Cass	Embezzlement	Kansas.
George Heinberg alias Charles Freiberg	Bay	Practicing medicine without license	Minnesota.
Dr. A. H. Drew alias Ray H. Maybury	Wayne	Grand larceny	New York.
George Heinberg	Bay	Illegal practice of medicine	Minnesota.
Frank Wladpowski	Kent	Wife desertion	Massachusetts.
D. Clyde Durfee	Ingham	Violation of liquor act	Illinois.
Thomas Wilczynski	Wayne	Breaking store in night	Ohio.
Simeon Tennyson	Calhoun	Wife desertion	New York.
William Wetzel	Genesee	Grand larceny	Pennsylvania.

SCHEDULE "B."**Statement of mandamus, certiorari and miscellaneous cases.**

MANDAMUS CASES DISPOSED OF-Supreme Court of U. S.

Detroit & Mackinac Railway Company vs. Michigan Railroad Commission and Fletcher Paper Company. No. 360. Application for mandamus to compel the laying of rails on "Tubbs Branch" so-called. November 10, 1915, argued and submitted. April 3, 1916, affirmed.

MANDAMUS CASES DISPOSED OF-Supreme Court.

Thomas D. Kearney vs. Board of State Auditors of State of Michigan. No. 26,842. Mandamus to compel the Board to audit pay roll as presented. October 28, 1915, submitted. December 22, 1915, mandamus denied. 22 D. L. N., page 1099.

George B. Horton vs. Board of State Auditors of State of Michigan. No. 26,842. Mandamus to compel the Board to audit pay roll as presented. October 28, 1915, submitted. December 22, 1915, mandamus denied. 22 D. L. N., page 1099.

Edward H. Barnard, Prosecuting Attorney vs. Willis B. Perkins, Acting Superior Court Judge of Grand Rapids. No. 26,820. June 3, 1915, submitted. July 23, 1915, mandamus denied. 22 D. L. N., page 619.

Charles H. Jasnowski, prosecuting attorney, ex rel Julius L. Krimmel vs. The Board of Assessors of the City of Detroit. April 4, 1916, submitted. May 12, 1916, mandamus denied by Circuit Court of Wayne county affirmed. 23 D. L. N., page 261.

Edward N. Barnard, prosecuting attorney of Kent County vs. Hon. Maj. L. Dunham, Judge of the Superior Court of Grand Rapids. April 10, 1916, submitted. June 1, 1916, mandamus denied. 23 D. L. N., page 273.

MANDAMUS CASES PENDING-Supreme Court.

Board of Supervisors of the County of Roscommon vs. Oramel B. Fuller, Auditor General. No. 23,453.

William F. Leslie vs. Michigan State Board of Registration of Medicine. No. 26,973. Application for mandamus to enforce registration under medical act.

William R. Skellenger vs. State Board of Registration in Medicine. No. 26,050. Application for mandamus to enforce registration under medical act.

Leroy Brazee vs. James V. Cunningham. No. 26,856. Mandamus to compel the issuance of a license.

Ethan W. Thompson, et al. vs. Secretary of State. Mandamus to compel recanvassing of petitions praying for a submission under the referendum clause of the Constitution of Act 304, P. A. 1915, to a vote of the electors and to compel the revocation of respondent's certificate that such petitions were sufficient.

John O. Plank vs. Oramel B. Fuller, Auditor General. Mandamus to compel the Auditor General to vacate a certain certificate of error.

MANDAMUS CASES DISPOSED OF-Circuit Courts.

Neal Alward vs. Board of Supervisors of Oakland County. February 26, 1916, petition dismissed.

MANDAMUS CASES PENDING-Circuit Courts.

The People of the State of Michigan ex rel. Franz C. Kuhn vs. American Express Company. Wayne Circuit.

CERTIORARI CASES-Supreme Court.

Neal Alward vs. Board of Supervisors of Oakland County; Floyd B. Babcock, County Clerk; Frank L. Doty, Prosecuting Attorney; Grant Fellows, Attorney General and members of the Board of Supervisors. No. 26,757. June 17, 1915, submitted. September 15, 1915, writ of certiorari dismissed.

Mary Wood vs. City of Detroit. No. 26, 514. Attorney General filed brief as amicus curiae. January 14, 1915, submitted. December 21, 1915, affirmed.

BEFORE MICHIGAN RAILROAD COMMISSION.

In re re-organization of Pere Marquette Railroad Company. June 20, 21, 27, 1916, hearing before Commission. The Attorney General appeared on behalf of the State and opposed the approval by the Commission of the plan opposing the amount of capitalization proposed.

MISCELLANEOUS CASES.

In the Matter of the alleged illegal sales of intoxicating liquors to certain Indians and persons of Indian descent in the County of Baraga.

In re claim of the Michigan Employment Institution for the Blind against the Manufacturing Distributing Bureau, Inc.

In the Matter of the claim of the Michigan State Prison against Gettleson Bros. of Detroit.

In the Matter of the claim of the Michigan State Prison against the Manufacturing Distributing Bureau, Lansing. Checks for \$100.00 and \$50.00 forwarded Warden Simpson.

In re claims against F. W. Van Winkle, Judge of Probate of Oceana County.

SCHEDULE "C."**QUO WARRANTO CASES PENDING-Supreme Court of Michigan.**

People vs. Sperry & Hutchinson Company. January 20th, 1916, argued and submitted.

Grant Fellows, ex rel Union Trust Company; Detroit Trust Company; Security Trust Company; Michigan Trust Company and Grand Rapids Trust Company vs. First National Bank of Bay City. January 20th, 1916, argued and submitted.

Grant Fellows, Attorney General vs. William F. Connolly; Abbey Beecher Roberts; W. C. Warriner; Lou I. Sigler; J. B. Edmonson & Fred L. Keeler, Superintendent of Public Instruction. (Teacher's Retirement Fund) April 14, 1916, submitted.

SCHEDULE "D."**CASES IN EQUITY DISPOSED OF-Circuit Court of Appeals.**

James C. Fargo, as president of the American Express Company vs. Perry F. Powers, Auditor General, et al. Appeal from District Court of the United States, Eastern District of Michigan, Southern Division, in Equity. Decree entered September 23, 1914, dismissing bill of complaint. 220 Federal Reporter, page 697. (The details of this case are given in the 1914 report, page 21.) November 30, 1915, check received by State Treasurer amounting to \$73,874.12 in full settlement, release and satisfaction of all claims of State against the American Express Company on account of taxes levied and assessed on the property of said company for the year 1903, due April 1, 1904, and for the year 1905, due April 1, 1906.

CASES IN EQUITY DISPOSED OF-District Court of the United States, Eastern District of Michigan, Southern Division, in Equity.

Daniel B. Scully and Maurice H. Scully vs. Arthur C. Bird, Dairy and Food Commissioner. Bill for injunction. Decree of this court dismissing the bill was reversed by the Supreme Court of the United States (209 U. S. 481) and the case remanded for further proceedings. (See 1908 report, p. 22.) This case was dismissed by the court for want of prosecution.

Detroit, Grand Haven & Milwaukee Ry. Co. vs. Oramel B. Fuller, Auditor General, and Franz C. Kuhn, Attorney General and Grand Trunk Railway Company of Canada vs. Same. (Consolidated cases Nos. 5503 and 5504.) Bill taken as pro confesso and decree entered May 29, 1916, declaring Act 95 of 1911 null and void. (For particulars of this case see 1915 report, page 22.)

Ann Arbor Railroad Company vs. Cassius L. Glasgow; Lawton T. Hemans; Charles S. Cunningham; Grant Fellows; Sid W. Millard; Jay M. Terbush and Leo. J. Kennedy.

The bill of complaint in this case was filed October 2nd, 1914. The complainant, The Ann Arbor Railroad Company, seeks to have the Michigan two-cent passenger law, Act 54, P. A. 1907, as amended by Act 276, P. A. 1911, declared invalid as applied to complainant on the ground that it is confiscatory and that under its operation the property of the complainant is being taken without due process of law. Application for a temporary injunction pending the trial of the case on the merits was made and a hearing thereon had at Grand Rapids on the 27th day of May, 1915, before Circuit Judges Knappen and Denison and District

Judge Sessions. On the 7th of June, 1915, an opinion was rendered by the court, in accordance with which the writ was refused. Leave to file an amended bill granted the Ann Arbor Railroad Company on September 7, 1915.

Considerable testimony was taken in the form of depositions and the actual trial before District Judge Sessions began in Grand Rapids on November 29th, 1915. Approximately four weeks was consumed in presenting the proof and arguing the case before the court. A decree dismissing the bill was entered on March 1, 1916.

Beekman Winthrop et al. vs. Grant Fellows, Attorney General, et al.

This is an action brought by certain bondholders of the Pere Marquette system, in conjunction with the trustees under one of the mortgages securing the bond. The purpose of the action is to have the so-called two-cent passenger rate law of Michigan, Act 54 of the Public Acts of 1907, as amended by Act 276 of the Public Acts of 1911, declared unconstitutional and void as applied to the Pere Marquette Railroad Company. It is the claim of complainant that the measure is confiscatory in that it operates to deprive said company of its property without due process of law, and also that the statute is invalid because of the classification made thereby. Application was made to the court for a temporary injunction pending the trial of the case upon the merits, restraining the defendant from enforcing or attempting to enforce any of the provisions of the law against the Pere Marquette Railway Company. A hearing was had on said application at Grand Rapids on July 1, 1915, before Circuit Judges Knappen and Denison and District Judge Sessions. The case was argued orally and extensive briefs were filed on both sides. The court refused to issue the injunction, and subsequently the complainant filed an amended bill of complaint. Defendant's motion to dismiss the amended bill was granted on January 31, 1916, and the injunction again refused. From this order of the court complainants have taken an appeal to the Supreme Court of the United States where the case is now pending.

At the session of the Legislature held in 1915, an attempt was made by the railroads of the State to secure the amendment of Act No. 54 of the Public Acts of 1907, as amended by Act 276 of the Public Acts of 1911, being the section of the railroad law fixing passenger fares by increasing the rate of passenger fares to be paid within the State. A large number of hearings were had upon these proposals by the Joint Committees of Railroads of the two Houses. The Joint Committees requested the Attorney General to appear before them and furnish them with such data as was available through the litigation then pending with the Duluth, South Shore & Atlantic Railroad Company involving the passenger rate law of the State, together with such views as the Attorney General might entertain with reference to such legislation. Pursuant to this request the Attorney General appeared before said committees on the 17th day of March and made a statement, which statement appears at page 653 of the House Journal for the session of 1915. He then advised that there should be no change in the passenger rate "until and unless a thorough investigation demonstrates and shows its necessity."

The proposed increase in passenger fares failed of passage, having passed the Senate and being defeated in the House, and after the defeat of such measure a bill was passed by the House for the creation of a Commission to investigate the question of passenger fares and report not later than February 1st, 1916. This bill failed of passage in the Senate. As soon as the increase fare bill was defeated, the Ann Arbor Railroad Company applied to the court for a temporary injunction against the Railroad Commission and the Attorney General to restrain them from enforcing the two-cent fare law in the State upon the theory that the rate was confiscatory. Very soon thereafter the security holders of the Pere Marquette system also filed their bill against the Railroad Commission and the Attorney General to restrain the enforcement of the two-cent law as against that system. The motion for a temporary injunction made on behalf of the Ann Arbor Railroad was argued before Judges Knappen, Dentison and Sessions on the 19th day of May, 1915, and on the 7th day of June, 1915, an opinion was filed refusing such application and the parties were directed by the court to prepare their case speedily for a hearing in open court before District Judge Sessions, and the case was set for hearing at Grand Rapids, September 7th, 1915. On this date, the Ann Arbor Railroad Company filed a new bill setting up that the freight rates in Michigan were also confiscatory and insisted that the freight case and the passenger case should be consolidated. This was done, but the assault on the freight rates necessitated an adjournment of the case to prepare for the new matters growing out of such attack. The case was prepared, however, on both passenger and freight rates and the trial commenced at Grand Rapids, November 29th, 1915, the testimony being taken in open court and the concluding argument was made and the case submitted to Judge Sessions on the 22d day of December, 1915. On the 1st day of March, 1916, Judge Sessions filed on opinion in the Ann Arbor case sustaining the State in practically all of its contentions and holding that neither the passenger nor the freight rates were confiscatory, sustaining one particularly important contention of the State, viz.: that the State was not bound to provide a rate which would be compensatory of the hazard incident to investments in railroads, but that if the rate earned equal the lawful rate of interest, the rate was not confiscatory. It is understood that the Ann Arbor case will be appealed to the United States Supreme Court.

On the 1st day of July, 1915, the application by the Pere Marquette interests for an injunction was heard at Grand Rapids before the same judges as heard the Ann Arbor case, and on the 5th day of August, 1915, an opinion was filed by the judges denying this application for a temporary injunction but giving to the Pere Marquette interests an opportunity to file a further bill and make a further showing. This opportunity was accepted by the Pere Marquette interests and a supplemental bill was filed and a further showing made, and on the 31st day of January, 1916, a further opinion was filed by the court comprised of the three judges before mentioned finally refusing and denying a temporary injunction on behalf of the Pere Marquette interests. From this order an appeal was taken to the United States Supreme Court, which appeal has been advanced in the Supreme Court and will be heard in the month

of October, 1916. This record shows the inability of the railroads to convince the court that they are entitled to an increase in passenger fares, and unless the fruits of these victories are surrendered by legislation, it is fair to assume that conditions must materially change before any increased passenger fares will be collected in the State of Michigan.

**CASES IN EQUITY PENDING-District Court of the United States,
Eastern District of Michigan, Southern
Division, in Equity.**

Detroit, Grand Haven & Milwaukee Railway Company vs. James R. Bradley, Auditor General. (Equity No. 3965.) This is a bill filed by the railway company for the purpose of restraining the enforcement of the taxes assessed against its property for the years 1906-7, under Act 173, P. A., 1901, on the ground that it is protected from such taxation by a special charter. The questions presented in this case are adjudicated by recent decisions of the State Supreme Court in cases against the company.

(Note.) For details of this proceeding see 1908 report, page 29.

The American Brake Shoe & Foundry Company vs. Pere Marquette Railway Company. Petition for Receivership. Receivers have been appointed for the Pere Marquette Railroad Company as an insolvent corporation. An attempt was made by the Attorney General to Intervene in the proceedings, a motion and a petition for that purpose having been filed. June 24, 1912, motion and petition argued and submitted. June 25, 1912, motion and petition denied, but Attorney General was given right to be heard in proceedings with reference to any action in which the State is interested. On October 31, 1912, petition of Newman Erb for compensation as receiver and notice of hearing same November 4th was received. An adjournment of hearing Erb's petition to November 11th was agreed to by all parties. June 11, 1914, received memorandum brief for use at hearing on the application of Receivers for authority to issue Receiver's certificates aggregating \$11,100,000. No decision has been rendered in this case.

Duluth, South Shore & Atlantic Railroad Company vs. Franz C. Kuhn, Attorney General, et al.

This is a case to test the sufficiency of the two-cent rate for the carriage of passengers traveling distances exceeding five miles upon the D. S. S. & A. Railroad. The two-cent rate was made applicable to the Upper Peninsula in 1911, and the South Shore then became subject to its provisions. The company filed its bill of complaint in the United States Circuit Court (now District Court) for the Eastern District of Michigan to restrain the Attorney General and the Railroad Commission from enforcing against it the two-cent rate, or the penalties incident upon refusal to carry passengers at that rate. The bill raises two principal questions:

(a) That the operation of the rate as applied to intrastate passen-

gers so affects the interstate earnings as to be an invasion of the power of Congress to regulate interstate commerce, and

(b) That the rate prescribed is insufficient to pay the cost of the service and a reasonable return upon the value of the property engaged in the business, and is therefore confiscatory.

A restraining order pending the hearing of a motion for a temporary injunction before three federal judges pursuant to statute was issued. The motion for preliminary injunction was argued and submitted. Before decision Judge Angell, who was one of the three judges hearing the motion, retired from the bench which renders necessary a reargument of the motion, which has not yet been had.

The restraining order is continued in force upon condition that the complainant proceed expeditiously in the taking of testimony. Considerable proof has been taken upon the part of the complainant and the taking of further proof is in progress. The delay in the reargument of the motion for injunction is occasioned by the fact that practically all of the time of those in charge of the litigation is taken up in the taking of proof on the merits. October 22, 1915, order entered and filed providing for subjection to order of court, of funds now on deposit and to be later deposited in certain banks by complainant for redemption of refund checks issued by complainant and for the conditional continuance of the restraining order previously entered in said cause until the further order of the court.

CASES IN EQUITY DISPOSED OF-District Court of the United States, Western District of Michigan, Southern Division, in Equity.

United States of America vs. Pennsylvania Company; County of Ottawa; Oramel B. Fuller, Auditor General; Fred Robinson, et al. No. 1834. April 29, 1916, cause argued on application for temporary injunction before Judge Sessions of Grand Rapids. Injunction against Auditor General; County Treasurer and City of Grand Haven refused.

CASES IN EQUITY PENDING-U. S. Supreme Court.

Germania Refining Company, a foreign corporation and the Independent Refining Company vs. O. B. Fuller, Auditor General, etc.

Frank W. Merrick, John W. Harrer & Grant Fellows vs. N. W. Halsey et al and the Weis Fibre Container Corporation. (Consolidated cause.) Appeal from District Court of the United States for the Eastern District of Michigan. This case has been advanced for argument to October 10th, 1916.

**BANKRUPTCY CASES DISPOSED OF-U. S. District Court,
Eastern District of Michigan, Southern Division.**

In re Consolidated Fisheries, a bankrupt. April 28, 1916, order entered by referee dismissing petition and order to show cause.

**BANKRUPTCY CASES PENDING-U. S. District Court, Eastern
District of Michigan, Southern Division.**

In the matter of Joseph W. Taylor, bankrupt. March 1, 1916, proof of claim forwarded to Warden of Michigan State Prison.

**BANKRUPTCY CASES PENDING-U. S. District Court, Eastern
District of Michigan, Northern Division.**

In the matter of Charles Scott Campbell, bankrupt. March 1, 1916, proof of claim forwarded to Warden of Michigan State Prison.

In the matter of George L. Frank, bankrupt. June 27, 1916, proof of claim forwarded to Warden of Michigan State Prison.

CHANCERY CASES DISPOSED OF-Supreme Court of Michigan.

Burton Howe and Claude H. Corrigan vs. Edward H. Doyle; John W. Haarer and Grant Fellows. Action for injunction to restrain the Michigan Securities Commission from enforcing the so-called Blue Sky Law. February 2nd and 3rd, 1914, submitted. September 28, 1915, appeal dismissed without costs to either party. 22 D. L. N. page 889.

Grand Rapids & Indiana Railway Company vs. Michigan Railroad Commission. No. 26,795. (Through Rate Case). Appeal from Kent Circuit. June 18, 1915, submitted. September 28th, 1915, affirmed. 22 D. L. N. page 841. January 25, 1916, writ of error refused by Justice Pitney of the United State Supreme Court.

Delray Connecting Railroad Company, a Michigan Corporation vs. Michigan Railroad Commission. No. 48,193. Appeal from Wayne Circuit. Appeal dismissed.

Michigan Independent Telephone & Traffic Association vs. Michigan Railroad Commission. Appeal from Kent Circuit. October 28, 1915, submitted. March 30, 1916, affirmed. 23 D. L. N. page 19.

In the matter of the Petition of Oramel B. Fuller, Auditor General of the State of Michigan for and in behalf of said State for the sale of certain lands for taxes assessed thereon for the year 1911 vs. Galen L. Stone, et al. January 17, 1915, submitted. January 3, 1916, modified and affirmed. 22 D. L. N. 1269.

Richard Kleinke, et al. vs. William R. Oates et al. No. 26,727. Appeal from Menominee Circuit. June 17, 1915, submitted. July 23, 1915, affirmed. 22 D. L. N. 636.

CHANCERY CASES PENDING-Supreme Court of Michigan.

Franz C. Kuhn, ex rel John B. Chaddock et al. vs. Board of Supervisors of the County of Wayne. Appeal from Wayne Circuit in chancery.

Michigan State Telephone Company vs. Michigan Railroad Commission; John J. Tweddle; Parm C. Gilbert and Citizens Telephone Company. No. 27,337. Appeal from Wayne Circuit. June 23, 1916, submitted.

SUPERIOR COURT OF GRAND RAPIDS.

The People of the State of Michigan vs. C. H. Corrigan; Burton A. Howe; William M. Bertles and Warren H. Snow. Violation of Act 46 of the Public Acts of 1915, known as the Michigan Blue Sky law. April 19, 1916, opinion rendered by Judge Dunham overruling defendant's demurrer.

CHANCERY CASES DISPOSED OF-Circuit Courts.

The Triangle Land Company, a corporation vs. John Hawley, James B. Bradley, Auditor General, defendant in cross bill of defendant John Hawley. Bill to quiet title. Ontonagon Circuit in Chancery. March 27, 1916, decree filed dismissing bill of complaint without costs to either party.

Manistee & Luther Railroad Company vs. Michigan Railroad Commission. Manistee Circuit in chancery. (Log rate tariff). April 27, 1916, discontinued by stipulation.

Isabelle Lincoln, Horatio Ferguson and William Kavanaugh vs. Charles S. Pierce, State Game, Fish & Forestry Warden, and Robert E. Ellsworth, Deputy State Game, Fish & Forestry Warden, et al. Alpena Circuit, in chancery. Bill for injunction. April 28, 1916, stipulation for discontinuance filed.

The Pontiac, Oxford & Northern Railroad Company vs. Michigan Railroad Commission. Ingham Circuit in chancery. (In re passenger rates.) November 29, 1915, bill dismissed.

Grand Rapids & Indiana Railway Company vs. Michigan Railroad Commission. Kalamazoo Circuit in chancery. (In re crossing in Kalamazoo.) May 8, 1916, stipulation of discontinuance filed.

In re petition of the Commissioner of Insurance for appointment of a receiver for Citizens Mutual Fire Insurance Company of Charlevoix, Emmet & Cheboygan counties. Emmet Circuit in chancery. Frank I. Voorheis of Harbor Springs appointed and trust accepted, June 22, 1911. Receiver's final account filed and Receiver discharged.

Detroit & Mackinac Railroad Company vs. Michigan Railroad Commission and Fletcher Paper Company. Wayne Circuit in chancery. April 6, 1916, bill of complaint dismissed.

Franz C. Kuhn, Attorney General, ex rel Lee Woodward et al. vs. City of Owosso and Common Council. Ingham Circuit in chancery. Dismissed.

William L. Jones vs. Michigan Railroad Commission. Bill for injunction. Cass Circuit, in chancery. August 23, 1912, answer of Cass Telephone Co. received. January 7, 1913, proofs taken before Judge DeVoignes. May 14, 1916, discontinued without costs to either party.

John F. Arnold vs. Emaline Arnold. Genesee Circuit, in chancery. Bill to set aside marriage and deeds of property. Defendant an insane inmate of Pontiac Hospital. Dismissed under judicature act.

People vs. Harry H. Reed. Violation of trading stamp law. Information quashed.

Granville L. Smith et al. vs. Michigan Railroad Commission. Cass Circuit, in chancery. May 4, 1916, stipulation for discontinuance filed dismissing case without costs to either party.

Pere Marquette Railroad Company vs. Michigan Railroad Commission et al. No. 44,095. Wayne Circuit in chancery. Stipulation of discontinuance filed May 16, 1916.

Nathan F. Simpson, warden, etc. vs. City of Jackson. Jackson circuit, in chancery. October 21, 1915, discontinued without costs to either party.

George W. Webster et al. vs. Oramel B. Fuller et al. Washtenaw Circuit, in chancery. Decree for complainant entered.

People vs. Concord Telephone Company. Ingham Circuit in Chancery. May 1, 1916, decree entered for complainant.

People vs. Almont Telephone Company. Ingham Circuit, in chancery. May 1, 1916, decree entered for complainant.

Maria A. Moore vs. Anabell M. DeCamp and Oramel B. Fuller, Auditor General. St. Clair circuit, in chancery. Stipulation for discontinuance filed.

Wells Smith vs. Job Rice and Jane Rice et al and State of Michigan. Jackson Circuit in chancery. Decree for complainant filed.

In the matter of the petition of Wesley E. Symmonds to review an order of the State Fire Marshal. Ingham Circuit, in chancery. Dismissed under provisions of judicature act.

In the matter of the Petition of Ernest Kowalk, to review an order of the State Fire Marshal. Ingham Circuit, in chancery. Dismissed under the provisions of the judicature act.

The Grand Trunk Western Ry. Co., a corporation vs. Michigan Railroad Commission. (Zipp Sidetrack Case.) Eaton Circuit, in chancery. July 23, 1915, allegations of bill sustained and order of Railroad Commission reversed.

Vermontville Farmers Independent Telephone Company vs. Michigan Railroad Commission. Eaton County, in chancery. Dismissed under the judicature act.

William E. Sheffield vs. John T. Winship, State Fire Marshal, et al. Feb. 19, 1916, discontinued by stipulation.

In the matter of the Estate of Mary Washington, deceased. Ingham Circuit. Appeal of the City of Lansing from the disallowance of a claim.

In the matter of the estate of John Till, deceased. Wayne Circuit. Appeal from Probate Court, Wayne County.

Pere Marquette Railroad Company, a corporation vs. Michigan Railroad Commission and Michigan United Railways Co. Wayne Circuit in chancery. (North Lansing Physical Connection.) Railroad company complying with the order of the Michigan Railroad Commission.

CHANCERY CASES PENDING-Circuit Courts.

John E. Bird, Attorney General, ex rel Village of Trenton, Township of Mongaugon (Gross Isle) and the Sibley Quarry Company, a corporation vs. City of Wyandotte. Wayne Circuit in Chancery.

Grand Trunk Railway Company vs. Cassius L. Glasgow, George W. Dickinson and James Scully, constituting the Michigan Railroad Commission and the Detroit United Railway Company. Wayne Circuit in chancery. (Action to secure reversal of a certain order in re Sweers and Prefrock et al vs. G. T. Ry. Co.)

Oneida Land Company vs. Oramel B. Fuller, Auditor General. Ontonagon Circuit, in chancery.

John M. Longyear et al vs. Charles C. Hopkins and Oramel B. Fuller, Auditor General. Gogebic circuit, in chancery.

Detroit & Mackinac Railway Company vs. Michigan Railroad Commission and Churchill Lumber Co. Wayne Circuit, in chancery.

Joseph E. Munhall vs. O. B. Fuller, Auditor General, et al. Iron Circuit, in chancery.

Huron Land Company, Ltd. vs. Michigan Land & Title Company, et al. and O. B. Fuller, Auditor General. Presque Isle circuit, in chancery.

John E. Loskot vs. John T. Winship et al. Charlevoix Circuit, in chancery.

People of the State of Michigan, represented by Oramel B. Fuller, Auditor General, and Franz C. Kuhn, Attorney General vs. Detroit, Grand Haven & Milwaukee Railway Company. No. 1,964. Kent Circuit, in chancery.

Lewis S. Gillette vs. Philip H. Herzog, et al. and State of Michigan. Delta Circuit, in chancery.

Consolidated Telephone Company, a Michigan corporation vs. Michigan Railroad Commission and the Valley Home Telephone Company. Huron Circuit, in chancery.

Henry M. Ferry vs. Imperial Life Insurance Company. Wayne Circuit, in chancery.

Reading Central Telephone Company, a corporation vs. Michigan Railroad Commission. Hillsdale circuit, in chancery.

State of Michigan vs. The Caldwell Transit Company. Ingham Circuit, in chancery.

State of Michigan vs. E. Jacques & Sons Co. Ingham Circuit, in chancery.

State of Michigan vs. Superior Sand & Gravel Company. Ingham Circuit, in chancery.

State of Michigan vs. The United Fuel & Supply Company. Ingham circuit, in chancery.

John T. Winship, State Fire Marshal vs. Sarah B. Cracknell. Chipewaga Circuit, in chancery.

John T. Winship, State Fire Marshal vs. Emma Van Buren. Ingham Circuit, in chancery.

In the matter of the Appeal from the order of the Probate Court admitting to probate certain paper writing as and for the last will and testament of William C. Cupp, deceased.

Union Telephone Company vs. Michigan Railroad Commission. Ingham Circuit, in chancery.

In the matter of the Petition of Oramel B. Fuller, Auditor General, for and on behalf of the State of Michigan for the sale of certain lands for the taxes assessed thereon for the year 1913,, vs. James E. Sherman, et al. Gogebic Circuit, in chancery.

Michigan Sugar Company vs. John T. Winship, et al. Ingham Circuit, in chancery.

In the matter of the estate of James H. Bass. Appeal from Probate Court Kent County, to Circuit Court, Kent County.

In the matter of the general assignment, for the benefit of creditors, of Glen D. Slocum and William J. Baker, lately doing business under the firm name of Slocum & Baker. Cass Circuit.

In the matter of inheritance tax upon transfers in the Estate of Charles W. Post, deceased. Calhoun Circuit. A proceeding instituted by the State of Michigan for the purpose of determining the inheritance tax to be paid by the respondent legatees under the last will and testament of Charles W. Post, deceased. May 23, 1916, jury selected and proofs commenced. Seven days were consumed in taking proofs and hearing arguments. June 2, 1916, case submitted. Jury disagreed and case continued to September term of court.

In the matter of James S. Madison, deceased. Escheated Estate. Appeal from probate court, Manistee County. Order of probate court affirmed March, 1916. Pending settlement of bill of exceptions.

SCHEDULE "E."**Statement of Proceedings For the Collection of Escheated Estates.**

Statement of amounts received from escheated estates for the year ending June 30, 1916.

1915.	
July 9, Estate of Ignatius Reddin, Wayne County	\$304 88
July 10, Estate of Peter Munson, Charlevoix County	504 05
July 12, Estate of John Freeburg, Wexford County	21 33
Aug. 26, Estate of John Hentz, Kent County	78 75
Oct. 27, Estate of A. Belensky, Wayne County	426 21
Oct. 30, Estate of Christine Schonshek, Wayne County....	78 29
Nov. 2, Estate of Louis Gauthier, Wayne County	645 36
Nov. 17, Estate of Charles McCracken, Kent County	56 98
Dec. 9, Estate of Ludwig Stoll, Kent County	295 66
Dec. 15, Estate of James Mullins, Kent County	38 91
Dec. 20, Estate of Michael Murphy, Kent County	63 43
Dec. 20, Estate of Earl L. Gorham, Kent County.....	167 51
Dec. 20, Estate of Charles J. Ashley, Kent County	525 31
1916.	
Jan. 27, Estate of James E. Powell, Kent County	56 97
Jan. 27, Estate of Henry Smith, Kent County	201 67
Jan. 31, Estate of John B. Kitelin, Kent County	11 53
Jan. 31, Estate of Daniel McLaughlin, Kent County	372 73
April 8, Estate of John Tracy, Leelanau County	653 13
May 5, Estate of John Gordon, Wayne County	12 13
May 8, Estate of Charles Colbath, Wayne County	29 87
June 5, Estate of William Goodale, Houghton County	180 25
June 8, Estate of Mary Wood, Wayne County	28 00
Total	\$4,752 95

ESCHEATED STATE CASES DISPOSED OF-Probate Courts.

In re Estate of Don D. Silliman, deceased, Wayne County.
 In re Estate of Bella Campbell, Wayne County.
 In re Estate of Rosanna A. Day, deceased, Kent County.
 In re Estate of George W. Hale, deceased, Kent County.
 In re Estate of William J. Allen, deceased, Kent County.
 In re Estate of James Gray, deceased, Wayne County.
 In re Estate of W. Wallace Sutton, deceased, St. Clair County.
 In re Estate of Patrick Connolly, deceased, Wayne County.

In re Estate of Bella Rupp, deceased, Wayne County.
In re Estate of Louis Batzloff, deceased, Bay County.
In re Estate of Catherine Canterbury, deceased, Wayne County.
In re Estate of Steve Januk, deceased, Wayne County.
In re Estate of Asa J. Glasscock, deceased, Wayne County.
In re Estate of William B. Reid, deceased, Wayne County.
In re Estate of James Wellwood, deceased, Missaukee County.
In re Estate of Thomas Lowe, deceased, Wayne County.
In re Estate of Charles W. McCauley, deceased, Wayne County.
In re Estate of Racheal A. Sipp, deceased, Ottawa County.
In re Estate of Mary H. Moore, deceased, Wayne County.
In re Estate of Michael Tobis, deceased, Wayne County.
In re Estate of Fluta L. Kellogg, deceased, Calhoun County.

ESCHEATED STATE CASES PENDING-Probate Courts.

In re Estate of William Brandenburg, deceased, Kent County.
In re Estate of Julia R. Morrow, deceased, Kent County.
In re Estate of Nancy Wiest Brown, deceased, Cass County.
In re Estate of John North, supposed dead, Missaukee County.
In re Estate of John McIsaac, deceased, Schoolcraft County.
In re Estate of Anton Falkowski, deceased, Wayne County.
In re Estate of Luther Odell, deceased, Emmet County.
In re Estate of Harry William Carr, deceased, Wayne County.
In re Estate of Caroline King, deceased, Wayne County.
In re Estate of Hans Peterson, deceased, Manistee County.
In re Estate of Godfrey Eichsteadt, deceased, Saginaw County.
In re Estate of Bozalia Dipzinski, deceased, Otsego County.
In re Estate of Patrick Hackett, deceased, Bay County.
In re Estate of Fannie E. Richards, deceased, Macomb County.
In re Estate of Stanlay Poal, deceased, Wayne County.
In re Estate of Jessie Mercer, deceased, Wayne County.
In re Estate of Martha Gayton, deceased, Van Buren County.
In re Estate of Lewis Lubin, deceased, Wayne County.
In re Estate of Gustav Knop, deceased, Shiawassee County.
In re Estate of Joseph St. Clair, deceased, Kent County.
In re Estate of Benjamin M. Tutt, deceased, Kent County.
In re Estate of Annie Dinan, deceased, Wayne County.
In re Estate of Mike Rensar, deceased, Wayne County.
In re Estate of James Merrick, deceased, Kent County.
In re Estate of Andrew Bodnar, deceased, Wayne County.
In re Estate of James McNamara, deceased, Kalkaska County.
In re Estate of Carlton C. Hayes, deceased, Wayne County.
In re Estate of Josephine Dunbar, deceased, Ionia County.
In re Estate of Herman Foster, deceased, Wayne County.
In re Estate of John H. Roennan, deceased, Kalamazoo County.
In re Estate of John C. Jackson, deceased, Wayne County.
In re Estate of John Witt, deceased, Saginaw County.
In re Estate of William Taylor, deceased, Wayne County.
In re Estate of Riehard J. Burke, deceased, Wayne County.

In re Estate of Marcel Domroski, deceased, Wayne County.
In re Estate of George Edelman, deceased, Wayne County.
In re Estate of Simon Birkland, deceased, Newaygo County.
In re Estate of Carl Anderson, deceased, Bay County.
In re Estate of Morris C. Ries, deceased, Wayne County.
In re Estate of Henry Howarth, deceased, Oceana County.
In re Estate of Sarah A. Danielson, deceased, Oceana County.
In re Estate of William Copple, deceased, Oceana County.
In re Estate of Robert Bond, deceased, Oceana County.
In re Estate of Armoda Trucca, deceased, Wayne County.
In re estate of Mary McFall, deceased, Wayne County.
In re Estate of Joseph Thennes, mentally incompetent, Kent, County.
In re Estate of Louwerina Yeager, deceased, Ottawa County.
In re Estate of Elizabeth Hinen, deceased, St. Clair County.
In re Estate of John Walters, deceased, Wayne County.
In re Estate of George J. Demars, deceased, Wayne County.
In re Estate of John Brady, deceased, Kent County.
In re Estate of Samuel Bean, deceased, Wayne County.
In re Estate of Henry Gruba, deceased, Wayne County.
In re Estate of Clement W. Brooks, deceased, St. Clair County.
In re Estate of George Kesler, deceased, Wayne County.
In re Estate of Harry Shaw, deceased, Wayne County.

SCHEDULE "F."

INHERITANCE TAX CASES

Table of cases disposed of during fiscal year ending June 30, 1916, showing amounts collected through the efforts of the Attorney General.

TABLE 1.

Name of decedent.	Probate Court County of.	Amount paid.	Date.
Annie C. Fitzgerald	Wayne	\$103 96	10-12-15
Annie Arndt	Kalamazoo	29 73	9-1-15
John Chipman Gray	Ingham	87 97	8-2-15
E. Anna Knight	Ingham	78 00	7-20-15
Flora A. Cassady	Genesee	34 36	7-2-15
Caroline O. Seabury	Ingham	180 52	9-15-15
Elizabeth Gordon	Ingham	468 75	7-9-15
Percy P. Lewis	Ingham	333 39	7-31-15
Jacob Langeloth	Ingham	125 88	7-7-15
Oliver L. Rice	Ingham	35 75	7-17-15
Albert H. Howland	Ingham	50 04	7-7-15
Alfred B. Hall	Ingham	153 90	7-7-15
George F. Manning	Ingham	334 88	7-10-15
Susan C. Dove	Ingham	112 38	7-10-15
Robert K. White	Ingham	71 25	7-20-15
Alexander Ceppi	Ingham	56 98	8-13-15
Duncan M. Fuller	Ingham	57 00	10-13-15
Lucy Mackenzie	Ingham	26 13	8-13-15
Truman A. Cunliff	Ingham	12 31	8-21-15
Hasket Derby	Ingham	241 80	10-12-15
Harriet M. Chapman	Washtenaw	99 96	9-7-15
Charles W. Sherburne	Ingham	125 40	10-12-15
Anna M. Pickford	Ingham	118 58	10-15-15
Elizabeth Humphrey	Wayne	65 64	8-31-15
William Swazey	Ingham	501 60	10-21-15
Gilbert N. McMillan	Ingham	77 00	10-25-15
Mary L. Rogers	Ingham	906 84	10-25-15
J. P. Hodgson	Ingham	1,426 90	10-25-15
Henry M. Fulver	Jackson	251 21	12-15-15
John B. Smith	Ingham	77 04	11-13-15
Cornelius J. Carll	Ingham	283 79	11-13-15
William E. Barker	Wayne	909 96	11-19-15
Ellen M. Finger	Ingham	854 58	11-16-15
Eleanor T. Brooks	Ingham	159 88	10-26-15
Ida M. Moog	Muskegon	46 30	10-29-15
Isadore Multop	Livingston	48 22	10-15-15
Victor Coats	Ingham	6 05	11-30-15
Theodore Harrington	Ingham	197 77	11-24-15
Clara A. M. Greer	Ingham	125 00	11-29-15
Mary Jeanette Parish	Ingham	35 94	11-15-15
Mary Bell	Ingham	70 33	12-30-15
Victor U. Learned	Ingham	80 75	12-6-15
Louis J. Keith	Ingham	172 05	12-30-15
Edward Harland	Ingham	47 74	12-6-15
Samuel Jackson	Ingham	15 68	12-13-15
Joseph W. Crowell	Ingham	190 75	2-16-16
Mary Ellen Lowell	Ingham	58 03	12-8-15
J. Arthur Beebe	Ingham	29 72	5-26-16
Helen M. Shepley	Ingham	683 43	1-5-16
Mary Lynch	Ingham	149 98	1-15-16

Name of decedent.	Probate Court County of.	Amount paid.	Date.
Mary Eddy Driggs	Ingham	\$95 29	12-20-15
Ezra S. Stearns	Ingham	48 98	2-17-16
Eugene D. Greenleaf	Ingham	150 16	2-5-16
Louis Cabot	Ingham	737 70	2-17-16
Emily R. Van Vechten	Ingham	21 82	2-7-16
William E. Schmelzel	Ingham	157 32	12-29-15
Caroline H. Badlam	Ingham	41 50	12-24-15
William W. Goodwin	Ingham	146 20	2-17-16
Elizabeth M. Voorhees	Ingham	98 47	1-7-16
Adeline Pumpelly Kidd	Ingham	433 90	2-10-16
James R. Brown	Ingham	195 94	1-19-16
John Edward Brown	Ingham	4,359 07	2-18-16
C. Albert LePrince	Ingham	74 00	4-27-16
Abbey Austin Potter	Ingham	65 81	1-28-16
Lynan F. Gordon	Ingham	371 82	3-13-16
Howard Townsend Martin	Ingham	54 15	1-22-16
Charles Gregory	Ingham	111 79	2-21-16
Joseph D. Carroll	Ingham	145 80	4-22-16
George Demarest	Ingham	34 20	1-20-16
Clara D. Hoar	Ingham	132 75	1-29-16
Caroline H. Coffin	Ingham	132 95	5-8-16
Joseph G. Savage	Ingham	73 04	2-14-16
Fannie R. North	Ingham	49 51	2-8-16
Cora W. Gregory	Ingham	70 40	2-5-16
George Thomas Smith Hughes	Ingham	27 50	3-20-16
Sarah A. Churchill	Ingham	22 40	2-14-16
Isaac H. Eddy	Ingham	10 26	2-17-16
Walter W. Hodges	Ingham	184 54	2-15-16
Frederick Whitney	Ingham	359 10	3-6-16
Almira F. Brown	Ingham	42 71	2-17-16
Charles H. Hammond	Ingham	302 87	2-17-16
Mary S. Denniston	Ingham	420 00	2-15-16
Francis L. English	Ingham	47 50	2-24-16
Abbott Lawrence	Ingham	97 60	2-23-16
Nathan F. Merrill	Ingham	55 10	2-28-16
Mary M. Thompson	Ingham	108 32	2-23-16
Jane Furze	Ingham	7 96	2-17-16
John J. Brayton	Ingham	178 75	2-26-16
Louise M. Simpkins	Ingham	687 13	3-22-16
Caroline Carr	Ingham	74 10	3-14-16
Viola Phipps	Ingham	394 70	3-16-16
William S. Booth	Ingham	120 64	3-6-16
Theodore Canfield	Ingham	78 80	3-22-16
Hannah J. Gram	Ingham	405 02	2-19-16
Sarah J. Brayton	Ingham	127 91	3-21-16
Rose Hollingsworth	Ingham	133 72	3-21-16
William Watson	Ingham	418 34	3-18-16
D. M. Anthony	Ingham	180 84	3-21-16
John L. Riker	Ingham	986 17	4-8-16
Sarah C. Durfee	Ingham	89 30	3-21-16
Eliza A. How	Ingham	600 00	3-25-16
Hales W. Suter	Ingham	26 65	4-1-16
Charles S. Neal	Ingham	50 43	4-8-16
Catharine (Kate) Mullin	Ingham	8 31	4-4-16
John Earle Sayles	Ingham	5 19	3-30-16
Thomas J. Lewis	Wayne	780 73	3-22-16
Mary H. Chisholm	Ingham	63 54	3-30-16
Alfred G. Vanderbilt	Ingham	77 90	4-18-16
Harrison P. Wallis	Ingham	38 00	4-11-16
Henry C. Whitcomb	Ingham	236 91	5-2-16
Alfred N. Whiting	Ingham	35 63	4-18-16
Edward H. Callahan	Ingham	39 43	4-10-16
Mary E. R. Willard	Ingham	43 10	4-11-16
Emma H. Martin	Ingham	16 88	4-25-16
Hiram Garlock	Ingham	86 96	4-19-16

Name of decedent.	Probate Court County of.	Amount paid.	Date.
Horatio Rowe.....	Ingham.....	\$57 33	4-8-16
William E. Muir.....	Ingham.....	38 63	4-18-16
Mary A. Moore.....	Ingham.....	277 15	5-19-16
Marion M. Rumsey.....	Ingham.....	192 59	4-14-16
Mary K. Flint.....	Ingham.....	244 70	5-5-16
Edward E. Bennett.....	Ingham.....	584 73	4-20-16
Frances A. Wheelock.....	Ingham.....	66 75	4-18-16
Elizabeth Adams Foster.....	Ingham.....	28 13	4-18-16
Annie S. Dalton.....	Ingham.....	70 28	4-27-16
Cornelius H. Bradley.....	Ingham.....	12 29	4-24-16
Nelson W. Alrich.....	Ingham.....	766 44	5-13-16
John Wilbur.....	Ingham.....	29 94	5-16-16
Frank Willard Grafton.....	Ingham.....	68 40	5-4-16
John Daly.....	Ingham.....	217 50	5-4-16
Harriet S. King.....	Ingham.....	180 67	4-25-16
Marla Gardner.....	Ingham.....	106 13	5-4-16
Hannah L. Bowdoin.....	Ingham.....	7 21	5-2-16
Thomas Potts.....	Ingham.....	30 53	5-4-16
William J. Boardman.....	Ingham.....	62 70	5-17-16
John R. Hunt.....	Ingham.....	9 60	5-25-16
Silas A. Houghton.....	Ingham.....	92 43	5-13-16
Harriet Sias.....	Ingham.....	93 34	6-10-16
S. Augusta G. Barnum.....	Ingham.....	15 26	5-19-16
Frederick L. Gay.....	Ingham.....	355 30	5-18-16
Mary A. Maxwell.....	Ingham.....	163 65	5-15-16
Edward T. Peck.....	Ingham.....	32 95	5-23-16
Theron M. Howard.....	Ingham.....	77 90	5-20-16
Elizabeth F. Gay.....	Ingham.....	19 19	5-25-16
James Mullins.....	Ingham.....	73 16	5-26-16
John Phelps Taylor.....	Ingham.....	53 67	5-25-16
John T. Morris.....	Ingham.....	19 14	5-26-16
Christopher Welch.....	Ingham.....	51 32	6-10-16
Walter B. Tracy.....	St. Joseph.....	30 38	5-9-16
Anna L. Buck.....	Kalamazoo.....	131 30	5-8-16
Abbey Wales Turner.....	Ingham.....	20 23	5-31-16
John G. Mackintosh.....	Ingham.....	111 00	6-8-16
Mary S. Mills.....	Ingham.....	65 79	6-10-16
Louisa C. Felton.....	Ingham.....	1,508 00	6-8-16
Julia L. Butterfield.....	Ingham.....	56 44	6-13-16
John P. Davis.....	Ingham.....	57 74	6-29-16
Jonas Ketola.....	Keweenaw.....	31 52	5-22-16
Adolph Boettler.....	Ingham.....	125 40	6-10-16
Loretta Mattice.....	Bay.....	22 86	5-31-16
Charlotte M. Scott.....	Ottawa.....	85 98	6-6-16
Joseph L. Bicknell.....	Ingham.....	150 18	6-29-16
Charlotte Carter Hall Elmer.....	Emmet.....	363 42	5-24-16
Annie Lebram.....	Ingham.....	56 43	6-24-16
Mary L. Hammond.....	Ingham.....	158 00	6-12-16
L. T. Custer.....	Ingham.....	83 13	6-29-16
Robert Bentel.....	Bay.....	301 81	6-23-16
Henry J. Heystek.....	Kent.....	41 99	6-29-16
Frank Manecke.....	Montcalm.....	28 18	6-28-16
Frederick Kelsey.....	Ingham.....	428 20	9-30-15
Charles W. Duane.....	Ingham.....	184 97	9-30-15
Cora M. Palmatier.....	Ingham.....	30 16	12-7-15
Caleb J. Norwood.....	Ingham.....	99 28	2-26-16
Katherine Spencer Leavitt.....	Ingham.....	34 06	3-2-16
Elizabeth R. Weston.....	Ingham.....	34 00	2-24-16
Total.....		\$34,203 67	

Inheritance Tax Cases Disposed of During the Year Ending June 30, 1916.

In the following cases orders were entered determining No Tax.

TABLE 2.

Name of decedent.	Date of determination.	Probate Court county of.
Sarah A. Curtis.....	7-13-15	Ingham.
Fannie Gale Willis.....	7-13-15	Ingham.
Daniel Robert Wilkie.....	7-13-15	Ingham.
Jennie Y. Hough.....	7-13-15	Ingham.
Ann E. Lancaster.....	7-26-15	Ingham.
Armanda M. Cilley.....	7-26-15	Ingham.
Sarah Jones.....	7-26-15	Ingham.
William M. Isaacs.....	8-4-15	Ingham.
John Henry Ernst.....	8-4-15	Ingham.
Mary B. Lewis.....	8-4-15	Ingham.
Annie R. Wright.....	8-9-15	Ingham.
Minerva Wing.....	9-3-15	Ingham.
Harriet E. Pingree.....	8-30-15	Ingham.
Abel D. Makepeace.....	9-9-15	Ingham.
George W. Walsh.....	9-9-15	Ingham.
Walter Ward.....	9-9-15	Ingham.
Caroline L. Davis.....	9-9-15	Ingham.
Sanford B. Monroe.....	9-9-15	Ingham.
Curtis H. Pettit.....	11-1-15	Ingham.
Albert C. Terry.....	9-30-15	Ingham.
Harriet E. Smith.....	9-30-15	Ingham.
Louisa M. Tournade.....	10-11-15	Ingham.
Richard C. Dixey.....	12-20-15	Ingham.
Elkanah H. Sears.....	10-11-15	Ingham.
Michael Speer.....	10-11-15	Ingham.
Charles R. Randell.....	10-18-15	Ingham.
Solomon Thomas Cobb.....	10-18-15	Ingham.
Mary Josephine Reilly.....	10-18-15	Ingham.
Mary W. Cram.....	11-1-15	Ingham.
Joseph B. Ames.....	11-1-15	Ingham.
Elisha B. Curtis.....	11-11-15	Ingham.
Agnes Brewster.....	11-11-15	Ingham.
Mary Hays.....	11-11-16	Ingham.
Theresa D. Woodruff.....	11-11-15	Ingham.
Joseph W. Thompson.....	11-15-15	Ingham.
Julia B. Sherman.....	11-15-15	Ingham.
Amy V. Shaw.....	11-15-15	Ingham.
Eli J. Whittemore.....	11-15-15	Ingham.
Harriet N. Hersey.....	11-15-15	Ingham.
Mary Bessie Proctor.....	11-15-15	Ingham.
Helen M. Turner.....	11-15-15	Ingham.
Ellen McDermott.....	11-22-15	Ingham.
Martha E. Osgood.....	11-22-15	Ingham.
John C. Osgood.....	11-22-15	Ingham.
Walter A. Turner.....	11-29-15	Ingham.
Bessie C. Thomas.....	11-29-15	Ingham.
Fred H. Woodward.....	11-29-15	Ingham.
Mary Jeanette S. Baldwin.....	11-29-15	Ingham.
Albion M. Potter.....	12-6-15	Ingham.
Charles F. Smith.....	12-6-15	Ingham.
W. Dudley Cotton.....	12-6-15	Ingham.
Elmer W. Billings.....	12-6-15	Ingham.
J. H. Blaisdell.....	12-6-15	Ingham.
Henry V. Crosby.....	12-13-15	Ingham.
Preston S. Lovell.....	12-13-15	Ingham.
Caroline A. Gage.....	12-13-15	Ingham.
Robert R. Outhet.....	12-20-15	Ingham.
Helen M. Parker.....	12-20-15	Ingham.
Frank W. Snow.....	12-20-15	Ingham.
J. E. Grieves.....	1-3-16	Ingham.

Name of decedent.	Date of determination.	Probate Court county of.
A. Lynan Williston.....	1-3-16	Ingham.
Horatio Bigelow.....	1-3-16	Ingham.
Uriah B. Fisk.....	1-3-16	Ingham.
Caroline D. Pope.....	1-3-16	Ingham.
Henry T. Brooks.....	1-3-16	Ingham.
H. J. Conger.....	1-3-16	Ingham.
Margaret Ruppe.....	1-10-16	Ingham.
T. F. Clary.....	1-10-16	Ingham.
Eldora O. Gragg.....	1-10-16	Ingham.
Chauncey S. Churchill.....	1-10-16	Ingham.
Anne M. Griswold.....	1-10-16	Ingham.
Winnifried Harrington.....	1-10-16	Ingham.
Charlotte M. Goldsmith.....	1-13-16	Ingham.
Francis A. Russeque.....	1-13-16	Ingham.
Jane Charlton.....	1-13-16	Ingham.
Samuel B. Massa.....	1-13-16	Ingham.
James A. Gillis.....	1-13-16	Ingham.
Grace V. Pitman.....	1-20-16	Ingham.
James N. North.....	1-20-16	Ingham.
Edwin Dresser.....	1-20-16	Ingham.
Frederick Walmsley.....	1-20-16	Ingham.
Julia M. Schieffelin.....	1-24-16	Ingham.
William R. Wilson.....	1-24-16	Ingham.
Leverett M. Whalen.....	1-24-16	Ingham.
Thomas B. Van Buren.....	1-24-16	Ingham.
James B. Church.....	1-24-16	Ingham.
George Quincy Thorndike.....	1-27-16	Ingham.
Elbridge G. Conklin.....	1-27-16	Ingham.
S. A. Dunn.....	1-27-16	Ingham.
Fritz G. J. Barby.....	1-27-16	Ingham.
Flora Baxter.....	1-27-16	Ingham.
Edwin Snow.....	1-27-16	Ingham.
Augustus B. Leonard.....	2-3-16	Ingham.
Mary F. Brooks.....	2-3-16	Ingham.
James F. Curley.....	2-3-16	Ingham.
Grafton St. L. Abbott.....	2-3-16	Ingham.
Kate A. Harris.....	2-3-16	Ingham.
Lucy C. Crehore.....	2-5-16	Ingham.
Horace N. Berry.....	2-7-16	Ingham.
Mary King.....	2-7-16	Ingham.
Martha B. Whitridge.....	4-22-16	Ingham.
James R. Dunbar.....	2-7-16	Ingham.
Eliza M. Small.....	2-10-16	Ingham.
Ira M. Martin.....	2-18-16	Ingham.
Stanley J. Oram.....	2-10-16	Ingham.
Helen A. B. Thompson.....	2-14-16	Ingham.
Emily B. Legg.....	2-14-16	Ingham.
Louis Ruepling.....	2-14-16	Ingham.
Albert G. Boyden.....	2-14-16	Ingham.
Thomas B. Shriver.....	3-2-16	Ingham.
Edward J. Walsh.....	3-2-16	Ingham.
Amos H. Pierce.....	3-2-16	Ingham.
Edward W. Branigan.....	3-2-16	Ingham.
Harriet Louisa Page.....	3-2-16	Ingham.
Charles E. Hussey.....	2-24-16	Ingham.
Arthur R. Pardington.....	2-24-16	Ingham.
Frank D. Pratt.....	4-17-16	Ingham.
Charles L. Richardson.....	3-6-16	Ingham.
John P. Dennett.....	3-6-16	Ingham.
Michael P. O'Connor.....	3-6-16	Ingham.
Margaret V. B. Dittmas.....	3-6-16	Ingham.
Johnathan Levi.....	3-17-16	Ingham.
Ann Eliza Allin.....	3-29-16	Ingham.
Blanche Hendricks.....	3-9-16	Ingham.
Francis Fitz.....	3-9-16	Ingham.

Name of decedent.	Date of determination.	Probate Court county of.
Albert Wilber	3-15-16	Ingham.
William B. Johnson	3-13-16	Ingham.
Alfred L. Cary	3-13-16	Ingham.
Clara P. Parsons	3-13-16	Ingham.
Jennie B. Skiff	3-13-16	Ingham.
Elizabeth M. Titcomb	3-13-16	Ingham.
Julia A. Stevens	3-13-16	Ingham.
Joseph Thompson	3-13-16	Ingham.
William H. Robbins	4-17-16	Ingham.
Rudolph Ellis	3-13-16	Ingham.
E. P. French	3-16-16	Ingham.
Arthur C. Morse	3-16-16	Ingham.
W. Burling Cocks	3-16-16	Ingham.
Alex Heyn	3-16-16	Ingham.
William Lyons	3-16-16	Ingham.
George W. Claffin	3-20-16	Ingham.
George Clark	3-20-16	Ingham.
Clarence A. Leighton	3-20-16	Ingham.
Burton S. Treat	3-20-16	Ingham.
Humphrey A. Randall	3-23-16	Ingham.
Elizabeth K. Remich	3-23-16	Ingham.
Francis C. Holmes	3-23-16	Ingham.
John T. Thornton	3-23-16	Ingham.
Mary A. Baker	3-23-16	Ingham.
Julia Dana	3-23-16	Ingham.
Frederick Wesson	3-30-16	Ingham.
Alexander McKenzie	3-30-16	Ingham.
Ellen H. McKenzie	3-30-16	Ingham.
Judith Gertrude Rollins	3-30-16	Ingham.
James Henry Sefton	3-30-16	Ingham.
Albert H. Hayden	3-30-16	Ingham.
Henry A. Belcher	3-30-16	Ingham.
Hugh O'Gara McShane	4-6-16	Ingham.
William W. Kirley	4-6-16	Ingham.
Mary S. Mitchell	4-6-16	Ingham.
Hamilton Adams Gale	4-6-16	Ingham.
Ellen E. Leach	4-6-16	Ingham.
Melvina A. F. Adams	4-6-16	Ingham.
Frank Ross	4-6-16	Ingham.
Charles H. Parker	4-6-16	Ingham.
Anna B. Berry	5-6-16	Ingham.
Elizabeth Clifford	4-10-16	Ingham.
Seward Moyer	4-10-16	Ingham.
William B. Kimball	4-10-16	Ingham.
Patrick H. Shay	4-10-16	Ingham.
Isaac H. Ripley	4-10-16	Ingham.
Charles M. Cabot	4-10-16	Ingham.
Edward Perry	4-13-16	Ingham.
Ellen A. Pinkerton	4-13-16	Ingham.
Smith W. Nichols	4-13-16	Ingham.
Charles F. Prichard	4-13-16	Ingham.
Francis M. Bull	4-13-16	Ingham.
Satira Fairbanks	4-13-16	Ingham.
Sarah C. Christie	4-13-16	Ingham.
Emma L. Blauvelt	4-20-16	Ingham.
Cornelia Chapman	4-20-16	Ingham.
Samuel J. Foster	4-20-16	Ingham.
Frederick J. Clemo	4-20-16	Ingham.
Alice M. Hallett	4-20-16	Ingham.
Charles H. Colgrove	4-20-16	Ingham.
Mary J. Ferris	4-20-16	Ingham.
Jessie T. Seely	4-20-16	Ingham.
Charles E. Fox	4-20-16	Ingham.
Dennis Crowe	4-27-16	Ingham.
Francis Taylor	4-27-16	Ingham.

Name of decedent.	Date of determination.	Probate Court county of.
Mary Caroline Endicott.....	4-27-16	Ingham.
Clara Elliot.....	4-27-16	Ingham.
Martha E. Stockwell.....	4-27-16	Ingham.
John H. Clark.....	4-27-16	Ingham.
George M. Van Vliet.....	4-27-16	Ingham.
Duncan Smith.....	5-1-16	Ingham.
Ethel Holloway Eklund.....	5-1-16	Ingham.
John F. Kimball.....	5-1-16	Ingham.
William Rogowski.....	5-1-16	Ingham.
Lewis B. Batson.....	5-1-16	Ingham.
Gerson Krouch.....	5-1-16	Ingham.
George N. William.....	5-1-16	Ingham.
Charles Schneider.....	5-1-16	Ingham.
Margaret D. Bennett.....	5-4-16	Ingham.
Edward Parker.....	5-4-16	Ingham.
Rebecca Scatchard Graves.....	5-4-16	Ingham.
Joseph Bath.....	5-4-16	Ingham.
Emma C. Foster.....	5-4-16	Ingham.
Lovell S. Burgess.....	5-8-16	Ingham.
Mercy A. Angel.....	5-8-16	Ingham.
Francis E. Ballard.....	5-8-16	Ingham.
Harriet E. Loring.....	5-8-16	Ingham.
Josephine Warren Linzee.....	5-11-16	Ingham.
Mary B. Hopson.....	5-8-16	Ingham.
Emma C. Spaulding.....	5-8-16	Ingham.
James C. White.....	5-8-16	Ingham.
Adolphus Strassman.....	5-8-16	Ingham.
Anna C. Hawes.....	5-11-16	Ingham.
Helen Hier.....	5-11-16	Ingham.
Simeon Sweet.....	5-11-16	Ingham.
Irving Baldwin.....	5-11-16	Ingham.
Mary K. Lewis.....	5-11-16	Ingham.
Morris L. Cohn.....	5-11-16	Ingham.
Harriet L. Schuyler.....	5-15-16	Ingham.
Joseph Bingham.....	5-15-16	Ingham.
Henry A. Casperfield.....	5-15-16	Ingham.
Matilda C. Van Rensselaer.....	5-15-16	Ingham.
William G. Cook.....	5-15-16	Ingham.
Sanford Adams.....	5-15-16	Ingham.
Edith Spencer.....	5-22-16	Ingham.
Charles E. Cobleigh.....	5-22-16	Ingham.
James H. Groom.....	5-22-16	Ingham.
J. W. Aitken.....	5-22-16	Ingham.
Edward Sturgis Grew.....	5-22-16	Ingham.
Mary H. Elliott.....	5-22-16	Ingham.
Nora L. Rockwell.....	5-22-16	Ingham.
Anna L. Wharton.....	5-22-16	Ingham.
Michael Bonfield.....	5-22-16	Ingham.
Helen T. Colwell.....	5-25-16	Ingham.
Herbert L. Pratt.....	5-25-16	Ingham.
John W. Townsend.....	5-25-16	Ingham.
Henry Hillebrandt.....	5-25-16	Ingham.
Sarah Elizabeth Starr DeForest.....	5-25-16	Ingham.
Lydia Annette Putney.....	5-29-16	Ingham.
Elijah Kent Hubbard.....	5-29-16	Ingham.
Charles G. Davies.....	5-29-16	Ingham.
James Rice.....	5-29-16	Ingham.
Seaman Mead.....	5-29-16	Ingham.
Sarah C. Leviston.....	6-1-16	Ingham.
Eliza T. Smith.....	6-1-16	Ingham.
Mary Ely Bassett.....	6-2-16	Ingham.
William F. Swan.....	6-1-16	Ingham.
Martha C. Stevenson.....	6-1-16	Ingham.
Lavinia T. Snow.....	6-8-16	Ingham.
Sarah A. Loomis.....	6-8-16	Ingham.

Name of decedent.	Date of determination.	Probate Court county of.
Charles R. Wiggin.....	6-8-16	Ingham.
John B. Herreshoff.....	6-8-16	Ingham.
James Lefferts.....	6-8-16	Ingham.
Norman H. Green.....	6-8-16	Ingham.
Seth H. Koopmans.....	6-8-16	Ingham.
Alice B. Pratt.....	6-8-16	Ingham.
Lucy M. Lord.....	6-8-16	Ingham.
Sir Charles Seely.....	6-12-16	Ingham.
Kate A. Wing.....	6-12-16	Ingham.
Augusta E. King.....	6-12-16	Ingham.
Esther Sarah Smith.....	6-12-16	Ingham.
Sarah M. Barrows.....	6-12-16	Ingham.
Anna Mohun Phelps.....	6-12-16	Ingham.
Benjamin Brown.....	6-12-16	Ingham.
Idabel Butler Jameson.....	6-12-16	Ingham.
John B. Holmes.....	6-15-16	Ingham.
Sarah S. Drake.....	6-15-16	Ingham.
Emmeline H. Johnston.....	6-15-16	Ingham.
Wesley C. Hemenway.....	6-15-16	Ingham.
Stephen J. Briggs.....	6-22-16	Ingham.
Edwin Calerdine.....	6-22-16	Ingham.
Henry Prew.....	6-22-16	Ingham.
Marks Starlight.....	6-22-16	Ingham.
Maria L. D. Tuthill.....	6-23-16	Ingham.
Henry M. Lewis.....	6-23-16	Ingham.
Therese C. Curran.....	6-24-16	Ingham.
Irene Loud.....	6-22-16	Ingham.
Ella M. Booth.....	6-26-16	Ingham.
James A. VanCleve.....	6-26-16	Ingham.
John C. Gauntlett.....	6-26-16	Ingham.
Elizabeth F. Terry.....	6-26-16	Ingham.
Patrick J. Barry.....	6-26-16	Ingham.
Thomas T. Bucknill.....	6-26-16	Ingham.
Sir Andrew Noble.....	8-26-16	Ingham.
Waldegrave Charles Fern Kell.....	8-26-16	Ingham.
Mary Froggatt Graham.....	8-26-16	Ingham.

In the following cases the tax has been determined but not paid.

TABLE 3.

Estate of.	County.	Amount of tax.
Jane Smith.....	Ingham.....	\$19 96
Clifford Brigham.....	Ingham.....	93 60
Elizabeth H. Brown.....	Ingham.....	26 40
Ralph L. Parsons.....	Ingham.....	28 49
Frederick W. Emery.....	Ingham.....	420 00
James M. McLean.....	Ingham.....	85 00
Edward P. Osborne.....	Ingham.....	25 40
James B. F. Thomas.....	Ingham.....	633 75
Elizabeth Mason.....	Ingham.....	66 61
Julia F. Baldwin.....	Ingham.....	5 90
John H. Weyth.....	Ingham.....	832 20
Sarah L. Bascom.....	Ingham.....	229 15
Isabel Emily Brush.....	Ingham.....	100 65
John R. Riedell.....	Ingham.....	276 22
Marie L. Andrews.....	Ingham.....	60 00
Peter Ehle.....	Ingham.....	23 20
Stephen B. Whiting.....	Ingham.....	879 70
Patrick Fitzgerald.....	Ingham.....	21 67
Total.....		\$3,827 90

The following cases are pending in Probate Court for Ingham and other counties, June 30, 1916.

TABLE 4.

Estate of.	County.
Francis A. Clark	Ingham.
Stephen R. Kirby	Ingham.
F. W. Stock	Hillsdale.
Mary E. Fisk	Allegan.
George J. Siegle	St. Clair.
Edward Scafe Scofield	Ingham.
Timothy McCarthy	Ingham.
Elizabeth Parmalee	Calhoun.
Courtney Freeman Wilson	Ingham.
Samuel Minot Jones	Ingham.
Spencer Summerfield Roche	Ingham.

The following cases are pending in Probate Courts for Ingham and other counties June 30, 1916, in which Lis Pendens have been filed.

TABLE 5.

Estate of	County.	Date Lis Pendens filed.
Charles L. Lamb	Ingham	2-2-12
William H. Smith	Kalamazoo	1-21-13
Lewis Taylor	Wexford	3-19-13
Mary McCarthy	Houghton	5-5-15
Elizabeth Sperry	Allegan	5-5-15

SCHEDULE "G."

Statement of proceedings relative to insane and feebleminded persons confined in the State Hospitals containing: (a) Statement of proceedings instituted for reimbursement to the State and result of each including money collected and paid to the State of Michigan through the efforts of the Attorney General with the assistance of the Auditor General and as reimbursement to the State for the support of certain insane and feebleminded persons in State Hospitals for the fiscal year ending June 30, 1916. (b) Reimbursement proceedings pending. (c) Statement of non-resident insane patients deported to and accepted from other States. (d) Deportation cases pending. (e) Statement of all moneys collected and paid to the State from such sources.

(a) REIMBURSEMENT PROCEEDINGS DISPOSED OF-Probate Courts.

In re Frederick H. R. Heinig. Kalamazoo State Hospital, Probate Court Ingham County. March 10, 1916, petition for revival of commission on claims and for reimbursement filed. Objections filed to allowance of State's claim. Compromise affected. March 20, 1916, received of administrator \$600.00 in full settlement.

In re Arthur Reynolds. Home for Feebleminded and Epileptic, Probate Court Wexford County. March 26, 1916, petition filed. May 8, 1916, claim allowed and payment made in sum of \$360.52.

In re Charles Alden Mitchell. Michigan Farm Colony, Probate Court Tuscola County. Claim of the State allowed without filing petition. May 8, 1916, payment made by administrator in sum of \$232.61.

In re Helen M. Carrick. Michigan Home & Training School, Lapeer, Probate Court Kent County. March 25, 1916, petition filed. Motion to dismiss petition filed. Investigation showed no property from which reimbursement might be had. May 19, 1916, petition dismissed by order of Probate Court.

In re Louise S. Carlin. Pontiac State Hospital, Probate Court Shiawassee County. March 4, 1914, claim filed. July 8, 1914, administrator appointed. June 8, 1916, payment made in full by administrator in sum of \$3,210.53. Receipt given by Attorney General protecting estate from possible claims by heirs who reside in France.

In re Mabel Reschke. Michigan Home & Training School, Lapeer, Probate Court Wayne County. April 15, 1916, petition filed. June 22, 1916, hearing on petition at which time it appeared that the patient had a

small personal estate which her guardian was appropriating for her care and maintenance. Consent to dismissal of petition given. Petition dismissed.

In re Laura Tyler. Traverse City State Hospital, Probate Court Wexford County. May 13, 1916, petition filed. Prosecuting attorney of Wexford county found no property from which reimbursement could be had. Consent to withdrawal of petition given.

In re William J. Clement. Michigan Home & Training School, Lapeer, Probate Court Wexford County. Investigation made by prosecuting attorney and found no estate from which reimbursement could be had. No petition filed.

In re Richard Spaeth. Pontiac State Hospital, Probate Court Huron County. February 7, 1912 petition filed. Investigation by prosecuting attorney showed no estate from which reimbursement could be had. Petition withdrawn.

In re Mary Ahearn. Pontiac State Hospital, Probate Court Huron County. Investigation by prosecuting attorney showed no estate from which reimbursement could be had. Petition filed but withdrawn.

In re Clarence E. Pierce. Pontiac State Hospital. No court proceedings had. June 15, 1915, received check for \$485 from guardian who has agreed to pay for the future support and maintenance of his ward.

In re Estate of John B. Kitelin. Kalamazoo State Hospital, Probate Court Kent County. Petition to revive commission on claims filed December 15, 1915. Claim allowed in full, \$227.75, January 12, 1916. Check received from guardian for the amount of said claim.

In re Estate of Daniel Laughlin. Kalamazoo State Hospital, Probate Court Kent County. Petition to revive commission on claims filed December 15, 1915. Claim allowed in full at \$320.51 Jan. 12, 1916. Check received from guardian for the amount of said claim.

In re George Jamison. Kalamazoo State Hospital, Probate Court Lenawee County. Petition for reimbursement filed Jan. 28, 1916. Hearing on petition Feb. 17, 1916. Order made requiring guardian to pay State \$500 and \$100 per year to apply on the amount expended for future support and maintenance of his ward. Check for \$500.00 received from guardian.

In re Sebastian Foster. Kalamazoo State Hospital, Probate Court Branch County. Claim against the State filed Jan. 31, 1916. Claim allowed; voucher for \$789.36 received May 9th, 1916.

In re Arthur B. Clark. Home for Feeble-minded and Epileptic, Probate Court Eaton County. Petition for reimbursement filed Aug. 8, 1912. Claim contested by Sarah P. Clark, mother of patient. Claim allowed. Appeal to circuit court, Eaton County. Order of probate court sustained.

Appeal taken to Supreme Court. Affirmed by Supreme Court. Received payment in full.

In re Christopher Herbolsheimer. Traverse City State Hospital, Probate Court Bay County. Jan. 31, 1914, petition for appointment of guardian and for reimbursement filed. Subsequent petition for appointment of guardian filed by relatives of patient. Patient discharged. Proceedings dismissed.

(B) REIMBURSEMENT PROCEEDINGS PENDING.

In re Emmeline McCormick. Kalamazoo State Hospital, Probate Court Allegan County. Claim filed against the Estate of husband, Thomas McCormick, deceased. Payment of claim pending sale of real estate.

In re James Terman. Cheboygan County. Heir to estate being probated in Canada. No petition filed. Awaiting payment of his share of estate to guardian.

In re Eliza Snyder. Kalamazoo State Hospital, Probate Court Berrien County. Petition for allowance of will and appointment of administrator C. T. A. filed May 4, 1916. Administrator C. T. A. appointed June 23, 1916. Pending.

In re Nancy Crisp. Probate Court Allegan County. Claim allowed May 12, 1916. Payment to be made on sale of real estate.

In re Charles H. Scaddin. Kalamazoo State Hospital, Probate Court Kent County. Claim filed on May 2, 1916. Pending.

In re William F. Montgomery. Pontiac State Hospital, Probate Court Wayne County. Petition filed Jan. 17, 1916. Hearing Feb. 16, 1916. Order made reimbursing State in full and requiring guardian to pay for his future support and maintenance. Payment to be made upon the sale of property. Pending.

In re William B. Taylor. Probate Court Ionia County. Claim filed Jan. 31. Allowed by consent. Payment pending settlement of estate.

In re Cady Bachman. Ionia State Hospital, Probate Court Houghton County. Guardian appointed July 5. Proceedings pending probate of the estate of her deceased husband, who was a resident of the Dominion of Canada.

In re Johanna Hasse. Kalamazoo State Hospital, Probate Court Hillsdale County. Claim against husband's estate filed June 27, 1916. Pending.

In re Estate Oren Wilbur, deceased. Traverse City State Hospital, Probate Court Shiawassee County. Claim filed Jan. 11, 1916. Allowed Feb. 5, 1916. Payment pending sale of real estate.

In re Hilda Bertlin. Probate Court Kent County. Petition to revive commission on claims filed March 22, 1916. Pending.

In re David K. Smith. Eloise State Hospital, Probate Court Wayne County. Petition to revive commission on claims filed August 2, 1915. Pending.

In re Mary Croten. Pontiac State Hospital, Circuit Court for the County of Oakland. Petition filed by husband to bar dower. Guardian appointed and decree made barring dower upon payment of State's claim in full. Matter pending sale of real estate.

In re Francis L. Curtis. Pontiac State Hospital, Probate Court Oakland County. Filed petition Dec. 18, 1911. Relief granted. Time extended to permit guardian to sell certain real estate to pay claims. Elmer E. Blakeslee, guardian.

In re Theresa McCarthy. Traverse City State Hospital. March 1, 1912, petition filed in Probate Court, Wayne County. Dec. 31, 1913, informed by prosecuting attorney's office at Wayne County that guardian had been appointed, qualified and discharged. Information received from Department of Interior, Washington, D. C., that patient had been granted pension and same had been paid to guardian. Investigation pending as to legal residence of patient.

In re Emma Courtright. Psychopathic Hospital, Ann Arbor. Jan. 7, 1913, claim of \$102.14 presented to Morris L. Courtright, husband of patient and to Mr. DeFoe, surety on bond and payment demanded. Proceedings suspended to allow husband further time to pay.

In re John Leiby. Kalamazoo State Hospital, Probate Court Kent County. April, 1911, petition for reimbursement filed. May 5, 1912, order entered to pay the State \$75.00 and \$10.00 per month. June 1, paid to State Treasurer as per order. June 20, paid \$30.00 on order. Further payment suspended. Matter investigated and found that patient's pension was being paid to married daughter who claims to be dependent. Further proceedings suspended.

In re Elizabeth Wolf. Pontiac State Hospital, Probate Court Wayne County. October 14, 1910, order entered for husband to pay \$2.00 per week to State for support of wife. April 5, 1914, demand made to prosecuting attorney on direction of Attorney General for payment of amount due, \$150.00. April 29, 1914, prosecuting attorney reports husband not able to make payments and further that there are minor children to support. Payment suspended until children are self-supporting or until further order of court.

In re Susan J. Hobbs. Traverse City State Hospital, Probate Court Oceana County. September 13, 1913, received notice of death of patient.

Oct. 19, claim filed before commission on claims and allowed. Payment pending settlement of estate.

In re Celah B. Chapin. Michigan Home & Training School. Petition for payment of administrator filed Nov. 15, 1913. Pending.

In re Andrew Frederickson. Traverse City State Hospital, Probate Court Leelanau County. Petition filed Dec. 12, 1913. April 20, 1914, claim allowed. Payment pending sale of real estate.

In re Wm. B. Haines. Pontiac State Hospital, Probate Court Oakland County. Jan. 9, 1914, petition for reimbursement filed. Jan. 17, hearing on petition. Petition contested and briefs of counsel filed. May 15, 1914, decision of court sustaining claim of State and ordering reimbursement to be made. Received draft from guardian for \$1,865.40. Pending.

In re William F. Schmeck. Pontiac State Hospital, Circuit Court, Saginaw County. Petition filed by mother to set aside deed given to patient. Decree made giving Schmeck a lien for \$1,500 on said property to be paid upon the death of the mother or upon the sale of her property. Pending.

In re Henry B. Swart. Traverse City State Hospital. Probate Court Montcalm County. Sept. 13, 1910, claim filed. Claim allowed but nothing to be paid until after death of widow. Pending.

In re David B. Mathias. Kalamazoo State Hospital, Probate Court Lenawee County. Petition and claim filed March 14, 1914. Claim allowed June 16, 1913. Payment pending sale of real estate.

In re Mary J. Brown. Pontiac State Hospital, Probate Court Huron County. Investigation being made by prosecuting attorney as to estate owned by patient.

In re Grover Sherod. Kalamazoo State Hospital, Probate Court Van Buren County. March 18, 1916, petition filed. April 17, 1916, hearing on petition. Patient had been temporarily released. Court's order to depend upon condition of patient.

In re Adelbert Holland. Ionia State Hospital. Probate Court, Eaton County. Matter under investigation by prosecuting attorney.

In re William D. Page. Traverse City State Hospital, Probate Court Antrim County. Patient has no estate from which reimbursement could be had. Investigation being made as to property interests of relatives liable for support.

In re Edith Goldsmith. Kalamazoo State Hospital, Probate Court Ingham County. May 22, 1916, petition filed. Reimbursement proceedings held up pending chancery proceeding in the Lenawee Circuit Court. Partition proceedings wherein patient has an interest pending in the Lenawee Circuit Court.

In re James H. Bass. Kalamazoo State Hospital, Probate Court Kent County. April 27, 1916, petition filed. May 9th, 1916, hearing on petition. Court ordered reimbursement in the sum of \$750.00. May 24, 1916, guardian appealed from order of Probate Court. June 5, 1916, petition, bond and order of appeal filed in circuit court for Kent County.

In re August J. Hill. Kalamazoo State Hospital, Probate Court Kalamazoo County. April 19, 1916, petition filed. June 20, 1916, hearing on petition. Court made an order selling real estate of patient.

In re Susan Bertram. Eloise Hospital, Union Trust Company appointed guardian for patient. Real estate left in trust for patient. Matter being investigated.

In re Willard Ailing. Michigan Farm Colony for Epileptics, Wajamaga, Michigan, Probate Court Tuscola County. February 16, 1916, petition filed. H. H. Smith appointed guardian. Land of patient sold. Remittance soon to be made.

In re Alice Howland. Traverse City State Hospital, Probate Court Isabella County. Investigation made by prosecuting attorney shows small amount of estate belonging to patient. Matter pending.

**(c) STATEMENT OF NON-RESIDENT INSANE PATIENTS
DEPORTED AND RECEIVED.**

In re Mary McCall, a New Jersey Patient, admitted to Kalamazoo State Hospital, August 14, 1915. Residence investigated and found to be in New Jersey. Patient delivered to 595 Newark Avenue, Jersey City on or about June 29th, 1916.

In re James Walker. Insane Indian. Patient returned from New Jersey to Isabella County, Michigan, and committed to Pontiac State Hospital.

In re Mary Wismueller. Alleged by Wisconsin authorities to be a resident of this State. Investigation had. May 6, 1916, Wisconsin authorities notified to return patient to her husband at Saginaw, Michigan.

In re Aaron J. Leisenrind. New York authorities allege him to be a resident of this State. Investigation by prosecuting Attorney of Kalamazoo County had and patient refused.

(d) STATEMENT OF DEPORTATION CASES PENDING.

In re Grace Thayer. Eloise Hospital. Alleged residence, Cleveland, Ohio. Residence of patient being investigated.

In re Boziman Boyich. Patient committed to Pontiac State Hospital, October 26, 1915. Alleged residence, Indianapolis, Indiana.

In re Hugo Sonnenschein. Alleged residence in Michigan.

In re James Bickel. Alleged residence in Michigan. Investigation found residence of patient to be in Minnesota. Patient refused.

In re Eunice Peacock. Alleged residence to be in Michigan. Matter of residence being investigated.

In re George Watt. Alleged residence to be in Michigan. Matter of residence being investigated.

In re Emmeline G. Snow. June 6, 1914, received at Kalamazoo State Hospital. Alleged residence, Cort County, Illinois. At one time a patient at Kankakee State Hospital.

In re Thomas F. Dowdle. April 8, 1914, received at Kalamazoo State Hospital. Alleged residence, Chicago, Illinois.

In re Albert E. Avery. Nov. 28, 1913, received at Traverse City State Hospital. Alleged residence, Wisconsin.

In re Alice Brown. July 26, 1913, received at Pontiac State Hospital. Alleged residence, Murphysborough, Ill.

In re Harry Clark. April 23, 1913, received at Kalamazoo State Hospital. Alleged residence, Mansfield, Ohio.

In re Stephen Kantrowski. Alleged by authorities of District of Columbia to be a resident of this State. Investigation being made by prosecuting attorney of Wayne County to determine this fact.

In re Louis Tatz. Alleged by Illinois authorities to be a resident of this State. Investigation being made by prosecuting attorney of Wayne County to determine this question.

In re Clarence Arthur Jepson. Alleged by Illinois authorities to be a resident of this State. Investigation being made by prosecuting attorney of Wayne County to determine question of residence.

(e) STATEMENT OF MONEY COLLECTED AND PAID TO THE STATE.

Name of patient.	County.	Amount	Total.
PONTIAC:			
Alabaster, Addie	Washtenaw	\$203 98	
Annis, Ralph W.	St. Clair	31 72	
Bammel, Theodore P.	St. Clair	100 00	
Beach, Aurilla	Oakland	196 89	
Bettis, Wm.	Sanilac	100 00	
Bowins, Dora Legatte	Sanilac	80 00	
Braden, John B.	Wayne	140 24	
Brockway, Elias	Livingston	58 50	
Brines, Theresa	St. Clair	192 12	
Carlin, Louisa	Shiawassee	3,210 53	
Carpenter, William H. M.	Bay	90 00	
Carpenter, Herbert L.	Wayne	59 53	
Couls, Walter R.	Wayne	109 14	
Cramer, Rozella	Oakland	135 00	
Crosby, Dexter B.	Saginaw	140 36	
Derry, Catherine	Shiawassee	96 80	
Dow, Wm. H.	Wayne	6 96	
Downs, Martha A.	Saginaw	110 24	
Duffy, Charles	Wayne	180 00	
Erdbecker, William	St. Clair	142 24	
Frey, John A.	Washtenaw	144 00	
Goudie, Sarah	Wayne	100 00	
Gunnison, Emma L.	Wayne	176 57	
Haines, William B.	Oakland	1,865 40	
Haskel, Clara	Wayne	112 00	
Hay, Andrew S.	Wayne	154 00	
Hay, Mary E.	Wayne	200 00	
Hopson, Paul C.	Wayne	101 14	
Hourteim, Arthur	Tuscola	214 52	
Hughes, Hannah R.	Wayne	164 00	
Hlan, Metha	Wayne	293 03	
Johnston, Anna	Wayne	91 00	
Leonard, James No. 2	Oakland	50 00	
Lewis, Ellen	Wayne	190 32	
McMann, Mrs. Edna M.	St. Clair	67 03	
McQuade, Mary J.	Macomb	154 70	
Markell, Melissa	Sanilac	108 00	
Mortimer, Charles	Sanilac	42 91	
Nellenbeck, Martin	Lapeer	65 00	
Pearce, Clarence E.	Livingston	485 00	
Perry, Marson A.	Wayne	184 00	
Pound, Gertrude	Wayne	196 56	
Ritchie, David	Tuscola	40 00	
Ritchie, Elizabeth	Tuscola	20 00	
Shaver, Hazel	Wayne	64 00	
Shuler, Bessie	Wayne	80 00	
Smith, John B.	Wayne	88 00	
Stewart, Grace E.	Wayne	116 00	
Stokes, Esther	Wayne	172 00	
Symington, Barbara	Wayne	100 00	
Tarilico, Baptiste	Wayne	54 34	
Uffer, Hulda	Saginaw	100 79	
Wilkinson, Cinnamon	St. Clair	52 00	
Williamson, Lillian J.	Wayne	33 28	
Wilson, Robert I.	Wayne	140 00	
Wright, Amelia	Oakland	4 35	
			\$11,607 99

Name of patient.	County.	Amount.	Total.
KALAMAZOO:			
Alden, Eva I.	Berrien.	\$169 32	
Allen, Wirt R.	Lenawee.	90 59	
Arnott, Alice E.	Kent.	500 00	
Bark, Lewis M. (insane soldier)	Kent.	90 00	
Barlow, R. W.	Ingham.	180 69	
Bass, James H.	Kent.	24 00	
Beers, Sarah Ethel.	Hillsdale.	39 69	
Besse, Anna L.	Berrien.	30 00	
Binder, Fredericka.	Calhoun.	140 00	
Bonfoey, Orpha M.	Kalamazoo.	84 50	
Bonton, Mary L.	Calhoun.	120 00	
Brewer, Lydia W.	Kalamazoo.	52 00	
Briggs, Thursey J.	Kalamazoo.	54 00	
Buck, Philo A.	Branch.	269 29	
Carter, Susan.	Branch.	79 00	
Cease, Sylvester (insane soldier)	Kent.	35 00	
Dake, Phila A.	Branch.	40 00	
Daniels, Elsie E.	Jackson.	84 59	
DeBoe, Marinus.	Ottawa.	62 09	
Donahue, John.	Berrien.	87 36	
Falling, Lovina.	Calhoun.	90 00	
Felton, Emma (insane soldier)	Kent.	90 00	
Ferguson, Mollie E.	Kalamazoo.	92 61	
Foster, James L.	Van Buren.	178 36	
Foster, Sebastian.	Branch.	798 36	
Funk, Daniel.	Van Buren.	182 48	
Grosvenor, Perry (insane soldier)	Kent.	90 00	
Hamlin, Shadrack (insane soldier)	Kent.	90 00	
Heinig, Frederick H. R.	Ingham.	600 00	
Hickey, Mary.	Calhoun.	100 00	
Hoag, Martha.	Lenawee.	52 00	
Hodgetts, Geo. (insane soldier)	Kent.	90 00	
Hyakes, Electa C.	Van Buren.	182 00	
Iliff, John (insane soldier)	Kent.	90 00	
Iliff, Nancy.	Allegan.	768 07	
Jamison, George.	Lenawee.	525 00	
Jackson, Margaret M.	Berrien.	144 00	
Kaufman, Mary A.	Kalamazoo.	21 00	
Kellogg, Lenora B.	Cass.	84 00	
King, Russell R. (insane soldier)	Kent.	90 00	
Kitelin, John B. (insane soldier)	Kent.	207 25	
Kreps, Pauline.	Jackson.	90 59	
Lamb, Lyman T. (insane soldier)	Kent.	25 00	
Laporte, Lewis (insane soldier)	Kent.	90 00	
Laughlin, Daniel (insane soldier)	Kent.	320 51	
Leiby, John B. (insane soldier)	Kent.	90 00	
Lewis, Wm. H. (insane soldier)	Kent.	90 00	
Loeks, Marinus.	Ottawa.	202 42	
Lord, Herbert J.	Eaton.	91 35	
Lowe, Ernest J.	Allegan.	132 70	
McColl, Thos. D. (insane soldier)	Kent.	90 00	
McKinnis, Clarence A.	Eaton.	137 34	
Mains, Burton S.	Calhoun.	89 18	
Merrifield, Emma.	Calhoun.	91 34	
Miller, Peter.	Clinton.	94 49	
Mudgett, Edward L. (insane soldier)	Kent.	90 00	
Multhaupt, Norbet (insane soldier)	Kent.	90 00	
Mumford, John D.	Kalamazoo.	94 49	
Niles, Lewis H.	Hillsdale.	150 00	
Parsons, Chas.	Eaton.	63 20	
Parsons, Maude.	Kalamazoo.	9 00	
Peck, Oscar, (insane soldier)	Kent.	25 00	
Pike, Sylvanus.	Allegan.	50 00	
Porter, Eliza.	Allegan.	108 00	
Post, Eunice G.	Hillsdale.	60 00	

Name of patient.	County.	Amount.	Total.
KALAMAZOO:—Concluded.			
Reams, Johanna	Kent	\$52 00	
Reynolds, Mary H.	Ottawa	136 59	
Roby, Martha A.	Hillsdale	1,150 00	
Rock, Chas.	Kent	94 61	
Rogers, Helen	Calhoun	82 03	
Ruehle, John	Allegan	26 00	
Seelman, Katie	Ottawa	182 09	
Shook, Edward	Kalamazoo	50 00	
Simmons, Lela	Lenawee	50 00	
Sinnott, John (insane soldier)	Kent	45 00	
Tanner, Catherine A.	Kent	65 00	
Tower, John N.	Calhoun	97 86	
Underwood, Chloe	Eaton	140 00	
Upright, John	Eaton	196 52	
Vining, Nancy O.	Jackson	69 52	
Walker, Jennie N.	Kent	75 00	
Wallace, Maria	Calhoun	50 00	
Wells, Esther T.	Kalamazoo	32 50	
White, Martha S.	Berrien	39 00	
Winterhalter, Wm. E.	Kent	52 00	
			\$11,857 58
TRAVERSE CITY:			
Amphlett, John W.	Cheboygan	\$50 00	
Anderson, Axel	Newaygo	186 63	
Ashley, Anna D.	Ionia	100 00	
Byron, Kate	Alpena	45 00	
Corwin, Hally A.	Missaukee	252 00	
Frederickson, Anders	Leelanau	250 55	
Gardner, Alice M.	Ionia	201 22	
Hansen, Heming	Montcalm	146 71	
Hart, Olive E.	Gratiot	190 00	
Hoesli, Marion J.	Crawford	117 53	
Jenne, Frank A.	Emmet	192 05	
Koch, Louisa	Bay	77 62	
Koch, Johanna	Bay	1,320 75	
Momberg, Emma	Bay	141 25	
Smith, Mary	Muskegon	140 00	
Temple, Emma	Osceola	75 00	
Thomas, Dan C.	Ionia	148 17	
Vargeson, Geo.	Lake	200 00	
			3,834 48
NEWBERRY:			
Denning, Margaret Ann	Mackinac	\$108 00	
Glasson, Mary A.	Houghton	108 25	
			216 25
IONIA:			
Williams, Harriet A.	Wayne	\$139 00	
			139 00
PSYCHOPATHIC:			
Andresch, William	Kent	\$50 00	
Hutchinson, Laura T.	Wayne	72 00	
Lapp, Carrie	Wayne	187 50	
Rosefield, Harry	Kent	7 00	
Shuler, Bessie	Wayne	80 00	
			404 50
ELOISE:			
Baker, Joseph	Wayne	\$30 00	
Becker, Catherine	Wayne	82 00	
Bertram, Susan	Wayne	276 57	
Blocki, Antoinette	Wayne	29 50	
Burrell, Helen D.	Wayne	10 28	
Deneye, Lydia	Wayne	66 00	
Dunneback, Eugene H.	Wayne	189 80	
Ernewein, Louisa	Wayne	24 00	
Fahey, Jno.	Wayne	45 00	
Harmon, Edith	Wayne	32 00	

Name of patient.	County.	Amount.	Total.
ELOISE—Concluded.			
Held, Ella M.	Wayne	\$204 00	
Hidde, Emilie.	Wayne	100 00	
Honses, Pauline.	Wayne	104 00	
Horigan, Thomas.	Wayne	157 50	
Jungnichel, Christina.	Wayne	108 50	
Perry, Catherine.	Wayne	244 00	
Plack, Caroline.	Wayne	120 00	
Schurtzinger, Cecelia F.	Wayne	199 68	
Smith, David K.	Wayne	541 23	
Trombley, Lucy.	Wayne	360 00	
Unterkofler, Lizzie.	Wayne	96 00	
Vanconsant, Louis E.	Wayne	172 00	
VanWansele, Julia.	Wayne	136 00	
			\$3,328 06
MICHIGAN FARM COLONY:			
Mitchell, Chas. Alden.	Ingham.	\$232 61	
			232 61
MICHIGAN HOME & TRAINING SCHOOL:			
Alden, John H.	Branch.	\$524 49	
Artell, Mary.	Benzie.	120 00	
Bassett, Frank.	Ingham.	120 00	
Beattie, Margaret E.	Wayne.	28 75	
Blood, Orville O.	Lenawee.	125 00	
Braman, Gussie.	Ionia.	6 50	
Brownell, Arthur.	Delta.	19 50	
Brunson, Lester M.	Monroe.	33 00	
Clark, Arthur B.	Eaton.	1,190 04	
Clement, Harry.	Van Buren.	52 00	
Conwell, May.	Wayne.	25 00	
Corgan, Mattie.	Ontonagon.	48 00	
Dailey, Nina Ann.	Gratiot.	160 00	
Davarn, Grace E.	Clinton.	100 00	
Davis, Ella G.	Shiawassee.	25 00	
Embach, Antoinette.	Wayne.	180 66	
Hean, Carl.	Saginaw.	40 00	
Hudson, Lester.	Ionia.	60 00	
Kinter, Lola J.	Branch.	90 58	
McCullough, Margaretta.	Wayne.	15 00	
McDonough, Isabella.	Livingston.	120 16	
Meisbauer, Chas.	Ontonagon.	15 00	
Reynolds, Arthur.	Wexford.	360 52	
Schluchter, Wm. A.	Huron.	228 66	
Shuler, Laura.	Oakland.	75 00	
Stringer, Marguerite.	Lake.	17 25	
Venn, Katherine.	Wayne.	47 19	
Vernon, Francis.	Saginaw.	158 00	
Vincent, Donald.	Branch.	60 00	
			4,043 30
Total for all hospitals.			
From which deduct overpayments to institutions.			\$35,663 77
Total.			22 78
			\$35,640 99

SCHEDULE "H."

Statement of assumpsit, ejectment, petition to vacate plats, trespass on the case, removal of officers proceedings and miscellaneous cases.

ASSUMPSIT CASES PENDING-Circuit Courts.

The State Board of Health vs. Board of Supervisors of Genesee County. Genesee Circuit.

The People of the State of Michigan vs. Charles Carlson. Baraga Circuit.

The People of the State of Michigan vs. Sperry & Hutchinson Company. No. 23,160. Kent Circuit.

Emma C. Doty vs. Frank E. Doty. No. 7,350. Ionia Circuit.

PETITION TO VACATE PLATS PENDING-Circuit Courts.

In re Petition of Ellan N. Holmes, to vacate certain plats. No. 52,585. Wayne Circuit.

PETITION TO BAR DOWER PROCEEDINGS PENDING-Circuit Courts.

The Dewey Stave Company vs. Emma A. Temple. Roscommon Circuit.

TRESPASS ON THE CASE PROCEEDINGS PENDING-Circuit Courts.

Frank G. Lafer vs. James W. Helme, Dairy and Food Commissioner. Lenawee Circuit.

PROCEEDINGS TO ENFORCE A LIEN-Circuit Courts.

The People of the State of Michigan by Oramel B. Fuller, Auditor General vs. Traverse City, Leelanau & Manistique Ry. Co., and the Union Trust Company. May 1, 1916, decree fixing amount to be paid complainant for taxes and interest at \$31,238.41.

SCHEDULE "I."

Statement showing amount received from various telephone and railroad companies, etc., in delinquent taxes; statement of amounts recovered as reimbursements for "costs of suits," and also refundings on costs of suits for the year ending June 30, 1916.

July 29, 1915, Arenac Telephone Company	\$285 96
Nov. 30, 1915, American Express Company	73,874 12
May 8, 1916, British-American Oil Co.	72 03
April 29, 1916, Grawn Rural Telephone Co.	56 59
April 26, 1916, Hanover Telephone Co.	4 17
June 30, 1916, Home Long Distance Telephone Co.....	80 92
June 6, 1916, Munising Telephone & Electric Co.	103 81
June 30, 1916, North Adams Telephone Exchange	26 97
May 8, 1916, Osceola Rural Telephone Co.	45 67
May 8, 1916, Ovid Mutual Telephone Co.	92 60
June 1, 1916, Spinks Corners Telephone Co.	18 00
	<hr/>
	\$74,660 84

Statement showing amount received, including refundings on costs of suits for the year ending June 30, 1916.

July 29, 1915, Manufacturers Distributing Bureau	\$100 00
Aug. 16, 1915, Manufacturers Distributing Bureau	50 00
May 29, 1916, Detroit & Mackinac R. R. Co. vs. Michigan Railroad Commission	20 00
	<hr/>
	\$170 00

REFUNDINGS.

Sept. 28, 1915, Refunding in Everest vs. McKenny, to cover unexpended balance of \$150.00 drawn May 14, 1915.....	\$37 95
June 5, 1916, Refunding in re Ann Arbor Railroad Com- pany vs. Cassius L. Glasgow et al., to cover unexpended balance of \$1,500 drawn Sept. 14, 1915	556 90
June 17, 1916, Refunding in re C. W. Post inheritance tax case to cover unexpended balance of \$200 drawn August 27, 1915	155 20
	<hr/>
Total	\$750 05

SCHEDULE "J."

List of Insurance Companies whose articles of association, amendments to articles of association, etc., have been approved and statement of the approval fees received and paid to State Treasurer.

Citizens Mutual Auto Insurance Company. Approving articles of incorporation. August 26, 1915, fee	\$5 00
Locomotive Engineers and Conductors Mutual Protective Association. Approving amendments to articles of association. September 1, 1915, fee	5 00
Rock Farmers Mutual Fire Insurance Company of Delta, Marquette and Alger Counties. Approving articles of incorporation and charter, October 18, 1915, fee	5 00
Michigan Motorists Mutual. Approving articles of incorporation, November 4, 1915, fee	5 00
Michigan Mutual Hail Insurance Company. Approving certificate of amendments to articles of association. January 17, 1916, fee	5 00
American Mutual Automobile Insurance Company. Approving articles of association and charter. January 17, 1916, fee....	5 00
Patrons Tornado Cyclone and Windstorm Insurance Company. Approving revised articles of association. January 18, 1916, fee	5 00
Patrons Mutual Fire Insurance Company of Michigan, Ltd. Approving revised articles of association. January 18, 1916, fee	5 00
Michigan Mutual Automobile Insurance Company. Approving charter. January 25, 1916, fee	5 00
Michigan Millers Mutual Fire Insurance Company. Approving article 9 of the articles of association. January 28, 1916, fee.	5 00
Farmers Mutual Fire Insurance Company of Barry and Eaton counties. Approving amendments to articles of association. March 1, 1916, fee	5 00
Grange Mutual Fire Insurance Company, Ltd., of St. Clair and Macomb counties. Approving amendment to articles of association. March 6, 1916, fee	5 00
Shiawassee Mutual Fire Insurance Company. Approving articles of association. March 21, 1916, fee	5 00
Farmers Mutual Lightning Protected Fire Insurance Company of Michigan, Ltd. Approving amendments to articles of association. March 22, 1916, fee	5 00

Concordia Mutual Fire Insurance Company of Bay, Saginaw and Arenac counties. Approving certificate for extending charter. March 27, 1916, fee	\$5 00
Citizens Mutual Fire Insurance Company of Pulaski. Approving charter. April 10, 1916, fee	5 00
Farmers Mutual Fire Insurance Company of Calhoun county. Approving certificate of amendment to the articles of association. May 8, 1916, fee	5 00
Auto Owners Insurance Company. Approval of articles of association. June 8, 1916, fee	5 00
Total	<hr/> \$90 00

SCHEDULE "K."

Summary Statement, covering approximately all amounts collected and paid to the State of Michigan, through the Attorney General, during the fiscal year ending June 30, 1916.

Excheated Estates (Schedule "E")	\$4,752 95
Inheritance tax (Schedule "F")	34,203 67
Insane, reimbursement for support (Schedule "G")	35,640 99
Amount received from various telephone and railroad com- panies, in delinquent taxes (Schedule "I")	74,660 84
Reimbursements for "costs of suits" (Schedule "I")	170 00
Refunding on "costs of suits" (Schedule "I")	750 05
Insurance approval fees (Schedule "J")	90 00
Total	\$150,268 50

SDHEDULE "L."

Official Opinions of the Attorney General.

HIGHWAY LAW. The Board of supervisors under Sec. 6 of Chap. 4 as amended at the session of 1915 by S. E. Act 106 may not reduce existing board of commissioners before the expiration of an existing term of office.

July 3, 1915.

Hon. Charles J. DeLand, Attorney at Law, Jackson, Michigan.

Dear Sir—I note from your letter of the 29th ult. that some question has arisen as to the construction to be placed upon Senate Enrolled Act 106. The measure referred to amends sec. 6 of Chap IV of the Highway law in such manner as to permit the board of supervisors to provide for "a board of county road commissioners consisting of one or more, but not exceeding three commissioners." This amendment becomes operative on the 24th of August next and the point at issue is as to whether or not it will be competent for the board of supervisors, proceeding under the section as amended to immediately reduce an existing board so as to affect and terminate the term or terms of office of one or more of such commissioners.

From an examination of the amending act, construed in connection with other provisions of the highway law, it does not occur to me that it was the intention of the legislature to authorize the board to take such action as would result in depriving any commissioner of his office before the expiration of the term for which he has been chosen. Rather, it seems to me that the purpose was, as expressed, to allow the board of supervisors to provide for the election of a board to be composed of one, two or three commissioners as might be deemed expedient for the best interests of the county. It is not indicated in the amending act that power is thereby conferred to terminate at will the tenure of office of a road commissioner heretofore chosen before the end of his term. I think it may be safely assumed that had this legislation been designed to accomplish that end such language would have been used as would leave no doubt upon this point. If the language of the statute is to be regarded as in any respect ambiguous, then in accordance with established rules of construction, it should not be so interpreted as to work a forfeiture of office before the expiration of the term. I do not think, however, that it can be said that the language of this measure is susceptible of more than one interpretation. It will be noted, as above stated, that the power conferred upon the board of supervisors is that of designating by appropriate resolution the number of commissioners that "shall be elected by the people." The act does not in terms confer the authority to reduce the board of county road commissioners at the pleasure of the board. Inasmuch as the authority of the board of supervisors depends wholly upon the statute, the powers conferred thereon can

scarcely be extended by implication in such manner as to interfere with existing terms of office of other officials. It seems to me that the conclusion cannot be avoided from the language used in this amending act that the legislature intended thereby to provide that the board of supervisors might fix the number of road commissioners, subject to the expressed limitation of the statute, that should be elected by the people, but that the board might not go beyond this and declare the term or terms of any road commissioner, or commissioners, in office at the time the act becomes operative, to be terminated before the time when the same will expire. It is, of course, a cardinal principle, and one that must not be lost sight of in interpreting measures of this character, that the legislative intent is to be carried out in order that the purpose sought to be accomplished by the statute may be accomplished. I do not think that any view other than as above suggested can be observed in this case without doing violence to the intention of the legislature of this State.

In reply to your specific question, I would say therefore that under this amending act the board of supervisors may by resolution fix the number of members of the board of county road commissioners subject to the limitation indicated in the statute, but may not terminate the tenure of any road commissioner holding office at the time such act becomes operative, before the expiration of his term. It is my opinion rather that existing terms shall be served out and that if upon the expiration of any such term there is in force a resolution of the board of supervisors by the terms of which the number of members of the board of county road commissioners is less than before the expiration of such term, no new member shall be chosen. In other words, a reduction in the number of such members is to be brought about automatically by regarding the office as abolished at the end of the term rather than by any arbitrarily enforced reduction that will terminate the tenure of such existing office before the same will expire by its own limitation.

Trusting that these suggestions will indicate to you my views upon the matter and with personal regards, I am,

Very truly yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

TAXATION. A reduction in assessed valuation may not be made under the authority of the Board of State Tax Commissioners because of depreciation in the value of the property after the board of review has approved the assessment rolls.

July 6, 1915.

Board of State Tax Commissioners, Lansing, Michigan:

Gentlemen—I am returning to you herewith a communication addressed to you by Mr. W. O. Holmes, Supervisor of Tyrone Township, Kent County, which you have recently submitted to this Department with a request for an opinion upon the question of law thereby suggested. As I understand the situation, certain property that was duly assessed in said township was seriously damaged by a tornado shortly after the local board of review had passed upon and approved the assessment roll. It is now sought to reduce the amount of the assessed valuation to the

present value of the property. The supervisor requests that the Board of State Tax Commissioners take action in the premises and grant to him authority to make such reduction. The inquiry presented is as to your power under the statutes of this State to take such action.

Section 152 of the general tax law, as last amended by Act 153 of the Public Acts of 1913, provides for a review of assessments under certain circumstances. In accordance therewith, if it is made to appear to the Board by investigation, or by written complaint of a taxpayer, that property subject to taxation has been omitted from the roll or that assessments have not been made as required by law, a review may be had. It is obvious that the instant case does not come within the scope of this section. It appears that the assessment of the property in question was duly and properly made and was approved by the local board of review. It follows that no action may be had under this section for the purpose of granting the relief sought, neither is there any other provision of the law to which my attention is called that would authorize the local authorities to reduce the assessed valuation of this property because of the loss that it has suffered, nor that empowers the Board of State Tax Commissioners to grant such authority. The property having been properly assessed, I am constrained to the opinion that the action taken cannot be set aside.

Furthermore, under the general tax law, the value of the property is to be determined as of the time when the assessment is made and approved. It is not the intent of that law that changes in the assessed valuation may be made at a subsequent time either because of a depreciation or because of an appreciation in the value of the property. It is, of course, obvious that endless confusion would result if such changes could be made. In any event we are, so far as the case under consideration is concerned, confronted by the proposition that the statutes of this State make no provision for the granting of the relief that is sought. I am, therefore, compelled to advise you that you have not the authority to accede to the request made by Mr. Holmes.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

TAXATION. Oil that is carried through pipes as an article of interstate commerce not being owned or stored in this State is not subject to taxation in Michigan.

July 6, 1915.

Board of State Tax Commissioners, Lansing, Michigan:
Attention Mr. Burtless.

Gentlemen—It appears from your communication of the 25th instant, and from a statement enclosed therewith, that the Imperial Pipe Line Company, Ltd., of Sarnia, Canada, owns and operates a pipe line extending from Cygnat, Ohio, through Michigan, crossing the international boundary line a short distance south of the City of Port Huron. Through this line oil is pumped from Canada to Ohio; none of such oil is delivered in this State or is stored here. As a part of the system, two tanks are maintained at Wayne, Michigan, the purpose thereof being to assist in

the process of transmitting the oil. As I understand the matter such tanks are not used at all for storage purposes, but rather for the purpose indicated and to enable the oil to be measured in compliance with the rules of the Interstate Commerce Commission. The question is presented as to whether or not the oil contained in the pipes and tanks of such company within the State of Michigan is subject to taxation here.

From an examination of the statutes of this State relating to the taxing of property, I am brought to the conclusion that the question should be answered in the negative. Under the statement of facts presented, the oil is not stored in this State but merely passes through the pipes of the company as an article of Interstate commerce. There is no provision of the statutes to which my attention is called that seems to contemplate the taxing of property of this kind under such circumstances. Section 1 of the general tax law, the same being section 3824 of the Compiled Laws of 1897 declares, "that all property, real and personal within the jurisdiction of this State, not expressly exempted, shall be subject to taxation." I am impressed that the particular species of property referred to in your letter cannot be said to be "within the jurisdiction of this State" within the contemplation of this section for purposes of taxation. It is rather, as before stated, merely an article of interstate commerce, which is carried through this State without being stored herein. It can, I believe, be scarcely said in view of the provisions of the statute, that the legislature has by law prescribed that taxes shall be levied upon property under such circumstances as are here disclosed.

I am returning herewith the statement submitted with your inquiry.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

BANKING LAW. A vendor's lien note secured on land in Texas does not create a "mortgage lien" within the meaning of subdivision (i) of section 27 of the banking law.

July 5, 1915.

Hon. Frank M. Merrick, Commissioner of the Banking Department,
Lansing, Michigan:

Dear Sir—I have before me your communication of the 30th ult., in which you request my views as to the construction to be placed upon certain provisions found in section 27 of the general banking law. As I understand the situation, a certain savings bank in this State desires to invest a certain amount of its deposits in so-called "vendor's lien notes" executed in the State of Texas and by the terms of which a lien is created upon real estate. The question presented is as to whether or not such investment may be made under the law.

Insofar as it is material to the determination of this question, the section of the statute above referred to provides:

"A savings bank shall keep on hand at least fifteen per cent of its total deposits, one-third of which reserve shall be in lawful money in its own vaults, and the balance on deposit payable on

demand, with banks, national or city, in cities approved by the commissioners as reserve cities or invested in United States bonds; three-fifths of the remainder of the savings deposits shall be invested by the board of directors as follows: * * * * *

(h) Said banks may loan the same upon negotiable paper, or other evidences of indebtedness secured by any of the above mentioned classes of security; or

(i) Upon notes or bonds secured by mortgage lien upon unencumbered real estate worth at least double the amount loaned
* * * .”

The answer to the question upon which you have requested my views must depend upon the construction to be given to the expression “mortgage lien” as used. It appears from the correspondence submitted with your inquiry that the land upon which the lien stated in the notes exists, has been sold at prices ranging from \$25 to \$35 per acre. One-third of the purchase price has been paid in cash and the remainder in the notes referred to. Said notes were issued in series, the obligations in each series maturing at different times, varying from one to four years. The deed of the property refers expressly to the vendor’s lien created by virtue of the clause in the notes. This deed has, it is stated been recorded.

Although it is not expressly so stated, I infer that the investment is sought to be made out of the 51% of deposits that may be loaned upon negotiable paper or other evidences of indebtedness secured by mortgage lien upon unencumbered real property. The requirement that such property be unencumbered necessarily implies that there shall be no other lien thereon prior to, or equal in rank to, the mortgage by which the obligations taken by the bank are secured. If, therefore, a savings bank were to be permitted under any circumstances to invest moneys out of the fund in question in vendor’s lien notes, all of such notes outstanding against a particular description must necessarily be taken. Otherwise, if a number of such notes were owned by others, the objection would be encountered that the property was not unencumbered because there would exist thereon a lien equal in rank to that held by the savings bank.

Quite possibly, however, in the case to which you refer, it is desired to buy all of such outstanding notes so that the objection above suggested would be avoided. This brings us to a consideration of the principal point at issue, that is, whether or not the lien created by these notes can be said to be a “mortgage lien” within the meaning of the Michigan statute here involved. The so-called “vendor’s lien” is expressly recognized by statute in the State of Texas. The provisions with reference thereto are analogous in many respects to the enactments of the legislature affecting mortgages upon real property. The decisions of the court of last resort of Texas, construing these legislative enactments and involving the nature and necessary incidents pertaining to the vendor’s lien, proceed upon the theory that such lien is analogous to the lien that exists by virtue of a mortgage or deed of trust. It is significant to note, however, that the statutes does not treat the vendor’s lien in connection with mortgage liens, nor does it

declare that such liens shall be regarded as identical and subject in all respects to the same considerations. Likewise, the decisions of the courts, while recognizing the analogy do not go to the extent of declaring that for all practical purposes, the vendor's lien and the mortgage lien are identical. The comparatively recent case of *Busch vs. Broun*, 152 S. W. 683, may be cited as suggesting the attitude of the Supreme Court of Texas. It was there held that an assignment of a vendor's lien note should be registered upon the ground that, under the terms of the statute and prior decisions of the courts, an assignment of a mortgage must be recorded, in order to protect the rights of the assignee as against third parties and that the assignment of a vendor's lien note was subject to similar considerations because such note conveyed "the same character of lien." It is obvious from a reading of this opinion of the court that in the use of the words quoted it was meant to imply that the note like the mortgage created a lien upon the land within the meaning of the laws relating to registration of instruments affecting the title to land. It was not indicated that in the opinion of the court the same lien was created by the notes as is created by a mortgage.

It is also of interest to note in this connection that the statutes of the State of Texas relating to certain mutual insurance companies permit the investment of the funds of such companies in national, State, county and city bonds, and also in first mortgages upon real estate, subject to the restriction that the amount secured by such mortgages should not exceed 50% of the value of the land. Permission is not given to such companies to invest in vendor's lien notes. Had it been the intention to grant such permission, it may, I believe, be assumed that terms of the statute would have been so expressed. This inference would seem to be fully warranted because of the various statutory provisions by which mortgages and vendor's lien notes are recognized as separate and distinct undertakings although analogous in many respects, and of the same character in that each creates a lien on real property.

As I view the matter the reasons that may have prompted the legislature of Texas in not including vendor's lien notes in the list of securities in which mutual insurance companies might invest are not difficult to ascertain. As suggested by the correspondence submitted by you many such notes may be issued, each imposing a lien upon the same property. If, as is usually the case, these notes are held by different parties, it follows necessarily that no one of such holders has what may be termed a prior lien. Rather all of such liens are of equal rank. It should be noted also in this connection that each of such notes imposes a lien, while in the event that a mortgage is executed, securing an indebtedness, there is, of course, but the one lien even though such indebtedness may be evidenced by a number of notes, bonds or other obligations. It was unquestionably the view of the Texas legislature that first mortgages were preferable to vendor's lien notes. Undoubtedly reasons of public policy were deemed to exist that warranted the apparent discrimination.

I am impressed that similar reasons of public policy obtain in the construction of the provision of the Michigan statute that is here in-

volved. A reading of section 27 is sufficient to indicate conclusively that the legislature deemed it wise to carefully safeguard the investment of the funds of savings banks. I challenge your attention specifically to subdivisions (e), (f) and (g) thereof. It was clearly intended that every precaution should be observed in order to prevent even a possibility of loss. Undoubtedly the history of banking as conducted prior to the passage of supervisory and regulatory statutes explains in large measure the extreme care with which this act was drawn. In permitting investment in notes or bonds secured by mortgage, it was provided, in accordance with the general spirit of the act, not only that the real estate must be unencumbered, but that it must be worth at least double the amount loaned. It occurs to me that this last provision might operate to prevent investment in the specific notes referred to in your communication, for it appears that such notes were given for two-thirds of the purchase price of the land. Assuming that such price may be taken to indicate the actual value of the land, it is patent that the liens created by such notes exceed in the aggregate one-half the value of the property. If, therefore, all of the notes outstanding against any particular description were acquired by the bank to which you refer, there might still be involved the question as to whether or not such investment is in contravention of this clause. However, I regard this feature as of minor importance unless it is sought to purchase notes secured by a trust mortgage, to which more specific reference will hereafter be made.

The significant feature of the clause to which attention has been directed lies in the fact that the legislature has seen fit to refer only to mortgage liens rather than to liens generally that may cover real property. Had it been the intention to include liens other than those existing by virtue of a mortgage, within the purview of the act, it is, I believe, fair to assume that this particular clause would have been included accordingly. I am strongly impressed that the intention of the legislature cannot be carried out unless the restrictions imposed are carefully observed in accordance with the letter of the law. Precisely the same reasons of public policy that prompted the inclusion of these provisions in section 27, require that in construing the same, there shall be no exception permitted and no practice allowed that will open the door to a modification of the requirements deemed to be necessary to safeguard the rights and interests of the depositors in savings banks. In accordance with these suggestions, I am constrained to the opinion that the savings bank to which you refer may not properly invest in vendor's lien notes covering property in the State of Texas on the theory that the lien created by such notes is a "mortgage lien" within the meaning of section 27 of the general banking law. This, I believe, covers your first question.

With reference to your second inquiry as to whether or not a loan secured by trust deed on realty in the State of Texas may be made the subject of an investment made by a savings bank out of its deposits, it would seem that no feasible objection may be made thereto. This so-called "deed of trust," a copy of which is submitted, is to all intents and purposes a mortgage and in consequence the lien created thereby may fairly be said to be a "mortgage lien." In making an investment

in obligations secured by such lien, it must be borne in mind that the aggregate of such obligations may not exceed one-half the value of the property and that such lien must be prior in character to all other liens outstanding. The fact that it is deemed necessary to execute this instrument in certain cases may in itself be taken as an intimation that the so-called vendor's lien notes are not as ample security as is the lien created by a mortgage or deed of trust. In case of any default under the latter, the trustee is, of course, charged with the duty of protecting the rights of all of the holders of the obligations that are secured by such lien. As stated, there seems to be no objection to an investment in obligations secured in this manner providing, of course, the necessary restrictions and limitations imposed by the statute are observed.

Respectfully, yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

LIQUOR BONDS. Township Board can not arbitrarily refuse to accept when properly presented with sufficient sureties.

July 12, 1915.

Mr. W. L. McAran, Township Clerk, Petersburg, Michigan:

Dear Sir—I have before me your communication of recent date in which you ask if a Township Board can arbitrarily refuse to accept a retail liquor dealer's bond, properly executed and in sufficient amount, when duly presented for approval.

That portion of section 8 of Act 170 of the Public Acts of 1911 containing a clause authorizing the Township Board of any township, and the Board of Trustees of any Village, or the Common Council of any city might, by a majority vote, to reject any and all liquor bonds presented to them for their approval, was declared unconstitutional by the Supreme Court of this State in the case of McCabe vs. Township Board of the Township of Burnside, decided July 24th, 1914. It follows, therefore, that the Township Board can not arbitrarily refuse to accept a liquor bond properly executed with sufficient sureties when presented to them for their approval.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

G-pi-O

FEEBLEMINDED AND EPILEPTIC CHILDREN. Committed from the State Public School at Coldwater to the Michigan Home and Training School at Lapeer, are not chargeable to Branch County for the first year of their maintenance at the latter institution.

July 12, 1915.

Mr. J. B. Montgomery, Superintendent State Public School, Coldwater, Michigan:

My Dear Sir—Replying to your communication of recent date in which you ask if sections 24 and 41 of Act 101 of the Public Acts of 1909 apply to children committed to the Michigan Home and Training School at Lapeer, from the State Public School at Coldwater, I would advise that in my opinion section 24 of said Act 101 applies to all patients committed to said Michigan Home and Training School at Lapeer under the terms of said Act.

Section 41 of said Act 101 of 1909 provides that the expense of maintenance of public patients shall be paid to the Michigan Home for Feeble-minded and Epileptic (now the Michigan Home and Training School) at Lapeer, upon the warrant of the Auditor General in accordance with the accounting laws of the State. Said section 41 further provides that the county from which each public patient was committed to such institution shall be liable to the State for the first year's maintenance of such patient at the Home.

If feeble-minded children are committed under the law from the State Public School at Coldwater to the Training School at Lapeer, and by the Probate Court for Branch County in which the State Public School is located, I do not think that Branch County should be burdened with the support of such inmates at the training school. I am impressed that such children would be considered as wards of the State and the expense of their maintenance at the Lapeer institution should be borne by the State from the time of their commitment to the Institution.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Gr-pi-O

SCHOOL LAW—TUITION. A pupil is entitled to tuition from their home district to an adjoining district in which a high school is maintained under the terms of Act 69 of 1909 until they arrive at the age of twenty years.

July 12, 1915.

Frank F. Ford, Prosecuting Attorney, Kalamazoo, Michigan:

My Dear Sir—I have before me your communication of the 1st inst. relative to Act 65 of the Public Acts of 1909 in which you submit the following:

A certain school district which has but eight grades has for the past five years been paying tuition of a certain resident student to an adjoining district wherein a high school course is taught and application has

been made by the parents for another tuition for the sixth year for this same student. You desire to know whether the district is obliged to furnish tuition for a pupil under these conditions for more than four years or the regular time prescribed for the high school course.

Your second inquiry is based upon a statement that a young lady, after having completed a high school course in an adjoining district upon tuition furnished by her home district, now seeks to take a post graduate course at this high school and has made application for tuition under said Act 65. You desire to know whether the district is obligated to furnish the tuition in this case.

Replying to your inquiries will state that in my opinion if application has been duly and timely made in each case the pupil would be entitled to a tuition from their home district until they arrive at the age of twenty years.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-pi-O

ASSAULT AND BATTERY. One who runs into and injures another while driving an automobile in a careless and reckless manner upon the public highway may be properly charged with the offense of assault and battery.

July 14, 1915.

Mr. John E. Dumon, Prosecuting Attorney, Big Rapids, Mich.:

Dear Sir—We are in receipt of yours of the 9th instant wherein you state:

“On the 5th of June a party by the name of Delo was driving his car along the highway in Millbrook township, this county. He was going down grade and at the beginning of the grade sounded his horn. There was a culvert about four hundred feet ahead of him and then a small hill so that the culvert was in the lowest point between the two hills. An automobile was coming down the other hill and a woman was walking along the left side of the road going the same way Delo was going. The approaching car turned out to its right and the woman crossed over to her right. Just as she was crossing, Delo, who had not sounded his horn since breaking over the hill four hundred feet to the rear, struck the woman and knocked her down, his car passing over her entire length from head to foot. Delo was going slow, perhaps five miles an hour. After crossing the culvert he was starting to turn out to let the other car pass. He was a green driver and when the car struck the woman, although he was going slow, he allowed the car to pass all the way over her. She received a very badly sprained ankle, bruised breast and wrenched shoulder. With the above statement of facts can Delo be held for assault and battery. I can find no case like it and can only find some that appear to make it possible. *People vs. Barnes* is the best case, and appears in 21 D. L. N. 817.”

An assault, as defined by Tiffany, is "an intent or offer with force and violence to do a corporal hurt to another whether from malice or wantonness," and the offense of assault and battery would be complete when the assault as defined resulted in actual injury to the person assaulted. It will be noted from the definition of assault that the same may result from either malice or wantonness, and the person may be guilty of assault and battery even though they intended no violence to the person injured but unintentional injury cannot be characterized as assault and battery unless it results from wanton negligence or recklessness of the safety of others. From the facts presented in your communication, it is apparent that there was no intent upon the part of the driver of the car to run into and injure the woman mentioned, and if an assault has been committed, it can only be based upon the theory that the driver was guilty of culpable negligence in not sounding the horn or recklessness in driving and this must be determined from the actual facts and circumstances and would be a question for the jury if the matter were brought on for trial upon the charge of assault and battery. In other words, if it appeared to the satisfaction of the jury that the person complained of was driving in a careless manner or with a recklessness of the safety of the person injured, a conviction of assault and battery might in my judgment be properly had.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

SCHOOL LAW. TOWNSHIP UNIT SYSTEM. A township unit school district organized in accordance with the Upper Peninsula township unit school law is co-extensive with the confines of the township and all property both real and personal is subject to taxation for school purposes.

July 15, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing,
Michigan:

Dear Sir—You have recently requested an opinion from this Department concerning the points raised in a communication received from one F. H. Ferris, Secretary of the Board of Education of Marquette Township. The context of the communication is in substance as follows:

In the year 1903, the school board of Marquette township, Mackinac County, met with the board of school inspectors of Pickford township, Chippewa County, and agreed to attach to a certain school district in Marquette township certain lands lying adjacent to the county line between the two counties and belonging to Pickford township, Chippewa County. At the time this land was attempted to be thus attached to the Marquette school district, there resided thereon several families having children of school age. In June, 1911, Pickford township adopted the township unit school system under the Upper Peninsula school law, and built a school house the following year within about two and one-half miles of residences of the people residing on the particular territory in question. At that time and continuously since the formation of the

township school district families with children of school age have resided on said territory and these families were taxed with other residents of the township for a school house and other school purposes of the district. The Marquette township school board claimed the right to that portion of taxes paid to the Pickford District by the residents of that particular territory in question and to the primary money drawn by those residing on the territory.

Based upon the above summary of facts, two questions are submitted, 1st, was the attaching of the territory in question belonging to Pickford township to the school district in Marquette township legal? 2d. Is Marquette township school board entitled to the tax and primary money belonging to this territory in Pickford but claimed as a part of the Marquette township district?

In answering the first question intelligently it would necessitate a knowledge as to whether certain conditions existed relative to the territory in question and its relation to a school district in Pickford township, which does not sufficiently appear from the facts submitted. However, as Pickford township subsequently adopted the township unit school system under the statute authorizing such, the township became a single school district, the confines of which was co-extensive with the township and that portion of the township of Pickford in question would become a part of the township school district of the township of Pickford and liable for assessment for school purposes the same as other property of the district and all resident children of school age living on such land with their parents or legal guardians would be reckoned in the school census of that district for the purpose of drawing its share of the primary school money. The school district of Pickford township, if properly organized under the law, became a complete single school district subject to all the general laws of the State and entitled to all the rights and benefits conferred upon such school districts by statute.

Trusting I have made myself clear in this matter, I remain,

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

SCHOOL LAW. SCHOOL OFFICERS. Removal from district constitutes vacancy in office. His subsequent return to the district does not of itself reinstate him to office. Other questions considered and answered.

July 15, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing, Michigan:

Dear Sir—You have recently requested an opinion from this Department on several propositions set forth in a communication from one A. C. Ketchum of Rodney, Michigan.

Mr. Ketchum submits six separate questions and requests answers thereto: The questions and answers are as follows:

1st Question: "If 'A' is elected to the office of assessor of a

school district and removes from said district, does his office become vacant?"

Answer: Yes.

2nd Question: "If 'B' as director is notified of his removal, is it legal for him to issue an order or orders for him to pay?"

Answer: If the assessor has removed permanently from the district, he ceases to be an officer of the district and will have no further authority as an official, except to turn over all money and other property of the district remaining in his hands to his successor when elected or appointed.

3rd Question: "Does 'A' and his bondsmen become holden for moneys paid by 'A' after his removal?"

Answer: The bondsmen of "A" are holden until a settlement is made with his successor in office and all property turned over to such successor.

4th Question: "Can a man that is under bond legally sign a bond for another?"

Answer: Yes, providing he can justify on the bond.

5th Question: "Can a justice of the peace hold a school office?"

Answer: Yes, if otherwise qualified.

6th Question: "If 'A' should remove to the school district in three or four months, would that reinstate him to office?"

Answer: The office having become once vacant by his removal with intention to permanently reside outside of the district his subsequent return to the district would not alone reinstate him in office.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

G-v-O

SCHOOL LAW. ELECTION OF TRUSTEES. A resolution by the board of education of township unit school district in the Upper Peninsula has no right to fix a date certain upon which candidates for the office of trustee shall file their intentions.

July 15, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing, Michigan:

Dear Sir—You have recently requested an opinion on a statement of facts submitted by one E. O. Gillespie of Stephenson, Michigan, involving the validity of a certain resolution passed by the board of education in a certain township unit school district in the Upper Peninsula, the resolution being as follows:

"Moved by Mr. Norlin, seconded by Mr. Hubbard, That prior to future school elections in this township the board of education shall cause to be prepared proper ballots on which shall be officially printed the correct name of such persons as are candidates for trustees of this school district; that all persons wishing to run for the office of trustee, shall, not later than ten days prior to such election file with the secretary of this board his written statement making known his or her wish, together with his or her correct name as it shall appear on the official ballot; Provided, that any person not wishing to comply with this resolution shall not be denied the right to have his or her name placed on the official ballot in either writing or by slip, by the voter while in the booth, while legally voting at such school election. Carried."

Mr. Gillespie desires to know whether this resolution is legal, and if so, can the intentions of a person to become a candidate for school trustee be filed with the board of education as provided by the resolution by another person acting for him.

The statute governing the election of trustees of township unit school district in the Upper Peninsula will be found in Act 176 of the Public Acts of 1891, entitled: "An Act for the organization of township school districts in the Upper Peninsula" as amended by Act 154 of the Public Acts of 1903.

It is provided by the statute in question that the officers of the said district shall consist of five trustees, who shall constitute the board of said district and their term of office shall be three years. It is further provided that annually on the second Monday of July, the qualified voters of the township shall elect from their number, by ballot, a trustee or trustees, whose term of office shall next expire or whose office has become vacated. I find nothing in the statutes providing for "official ballots" nor the time for preparing the same prior to the annual election. In specifically stating that the election of trustees shall be "by ballot" no doubt the legislature had in mind some form of official ballot to be used by the voters in expressing their choice of candidates for the office of trustee of the school district.

The requirement in the resolution, however, that "all persons, who shall run for the office of trustee, shall, not later than ten days prior to such election file with the secretary of the board his written statement making known his or her wish together with his or her correct name as it shall appear on the official ballot," if carried to the extent of precluding the printing of the name of any qualified school elector of the district on the official ballot at any time before the same were printed, would be clearly without authority under the statute. Any resident of the district, being qualified to hold office of trustee under the law would be entitled to have his or her name printed on any "official ballot" used by the electors of the district in expressing their choice of candidates, provided, of course, that due request for the printing of the same was made before the ballots were prepared. I know of no reason why a qualified elector desiring to become a candidate for school trustee under this act could not delegate someone to act for him in requesting his name to be printed upon official ballots to be used. It also follows that, notwithstanding, a name has not been printed on the official ballot, this

would not preclude the writing in of a name or the use of slips or pasters containing the name of any candidate qualified to hold the office.

Hoping I have made myself clear in this matter. I am.

Very respectfully,

GRANT FELLOWS,

Attorney General.

G-v-O

INLAND LAKES. Relative rights of owners of private Lakes considered.

July 15, 1915.

Mr. Willis L. Lyon, Prosecuting Attorney, Howell, Michigan:

Dear Sir—I am in receipt of your communication of recent date wherein you request an opinion from this Department on the following statement of facts. You state that there is a certain lake in your county, the title of which is in several persons who own property along the shores of this lake. This lake has no inlet or outlet and the question has now arisen regarding the right of the various owners to fish and boat on the lake. In the case of *Sterling vs. Jackson*, 69 Mich. 488, Justice Campbell in his opinion discusses the relative rights of riparian owners upon small and private lakes. In this discussion, he uses the following language:

“It is the law of this State that the riparian owner on any kind of water has presumptively the right to such uses in the shores and bed of the stream as are compatible with the public rights, if any exist, or with private rights, connected with the same waters. In rivers the theoretical line of ownership is in the middle thread or line of the stream, unless changed by islands or some other cause of deflection. If the stream is crooked, the curves must be adjusted so as to save all the rights of the different owners. But lakes have no thread, and, while there is usually no difficulty in fixing equitable bounds near the shore, it cannot be done, by any mathematical process, over any considerable extent of the lake; and, if—which does not often happen—there is any occasion for making partition of the surface, it can only be reached by some measure of proportion requiring judicial or similar ascertainment, and not by running lines from the shore. Small and entirely private lakes are sometimes divided up for such purposes as require separate use; but for uses like boating, and similar surface privileges, the enjoyment is almost universally held to be in common. This was held by the House of Lords in *Menzies vs. Macdonald*, 36 Eng. Law and Eq. 20. It was there held that for all purposes of boating and fishing, the whole lake was open to every riparian owner; while for such fishing as required the use of the shore, each was confined to his own land for drawing seines ashore, and the like uses.”

In the case of *Mackenzie vs. Bankes*, 3 Appeal Cases, page 1338, the question of the relative rights of riparian owners on small inland lakes

in Scotland was passed upon and the rule laid down by Lord Selborne as follows:

"It is these facts that the law of Scotland with respect to the rights of riparian proprietors in inland lakes has now to be applied. Under titles such as those by which both the competitors in the present case hold (and when nothing turns upon any evidence of exclusive possession), the entire lake, if surrounded by the land of a single proprietor, belongs to that proprietor as a 'pertinent' of his land. If there are more riparian proprietors than one, it belongs 'ratably' to them all. So far as relates to the solum or fundus of the lake, it is considered to belong in severalty to the several riparian proprietors, if more than one; the space enclosed by lines drawn from the boundaries of each property usque ad medium filum aquae being deemed appurtenant to the land of the proprietor exactly as in the common case of a river. But, for reasons, which may be presumed to be founded in part, if not wholly, on the irregularity of configuration, frequent in lakes, this ex adverso rule is not extended by the law of Scotland, to these rights (such as boating, fishing and fowling), which are exercised in or upon the surface of, lake waters. These are to be enjoyed over the whole water space by all riparian proprietors in common, subject (if need be), to judicial regulation."

I am impressed that the rule as laid down in the foregoing cases is equitable and just inasmuch as each riparian proprietor may use that portion of the bed of the lake which he owns in fees for any purpose which he sees fit, but the rights of boating and fishing upon the surface of such lake are common to all.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

R-v-O

STATE BOARD OF AGRICULTURE. May expend money for the improvement of land owned by M. A. C.

July 15, 1915.

Mr. A. M. Brown, Secretary, Michigan Agricultural College, East Lansing, Michigan:

Dear Sir—I note from your communication of the 13th instant that the Michigan Agricultural College owns eighty acres of land in Ingham County which it is desired to drain. You have asked my advise as to whether or not the Board of Agriculture is authorized under the provisions of law relating thereto to join with individuals in a project for such purpose. You state that the proportion of the expense that would probably be assigned to the Board will not exceed \$600 or \$800.

It occurs to me that no valid objection can be urged against the legality of the action suggested by your statement. The land referred to

is, of course, subject to the control of the State Board of Agriculture and is undoubtedly subject to improvements thereby. Such being the case, I see no objection to the expenditure of money for that purpose. From your statement of what is sought to be done it does not appear that the question of extending credit in aid of any person, association or corporation or of engaging in any work of internal improvement is involved. Rather, as suggested, the sole object sought to be accomplished is the improvement, not of land belonging to others, but of land that is the property of the Michigan Agricultural College and subject in all respects to the control of the State Board of Agriculture.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O.

TAXATION. BONDS. Bonds issued by drainage or levee district in the southern and southwestern states cannot be exempted from taxation under Act 142 of 1913, as amended by House Enrolled Act 105 of 1915.

July 15, 1915.

Board of State Tax Commissioners, Lansing, Michigan:
Attention of Mr. Burtless.

Gentlemen—Your letter of the 13th instant enclosing communication, addressed to the Secretary of State by Bowman, Cost & Company, investment bankers, St. Louis, Mo., at hand. It is stated in this communication that the said company is engaged in handling bonds, making a specialty of obligations issued by special taxing districts, such as drainage and levee districts of the southern and southwestern states. The question arises as to whether or not obligations of this character are within the scope of House Enrolled Act 105 enacted at the recent session of the legislature. The measure referred to is the amendment to Act 142 of the Public Acts of 1913, and is designed to provide for the payment of a specific tax upon certain debts "other than debts secured or evidenced by mortgages and liens upon real property and which mortgages and liens are recorded in Michigan, and upon certain foreign municipal bonds." The exemption from taxation under the general law of the State is granted in favor of all obligations upon which the specific tax contemplated by this enactment has been paid.

It will be noted that the title to the amended act, from which the above quoted language is taken, refers specifically to "foreign municipal bonds." Whether or not a special taxing district as is referred to in the letter of Messrs. Bowman, Cost & Company would be regarded as a municipality is a question that is not free from doubt. The courts of last resort in the different states in which such districts are permitted to exist and to issue their obligations are not fully in accord in construing statutory and constitutional provisions, as applied thereto in which the words "municipal" or "municipality" are used. However, any uncertainty that may be suggested by the title of the Michigan statute would seem to be avoided by the provisions of the body of the act. Sec-

tion 2 thereof in making provision for the payment of a specific tax enumerates the classes of bonds upon which such tax may be paid and which shall thereupon be exempted from taxation under the general tax law. Included in the list are State, county, township, city, village, school, district and good roads district bonds, duly issued in some State other than Michigan. It will be noted that the legislature did not see fit to include in the favored list obligations issued by special drainage districts or by levee districts organized under the laws of the southern and southwestern states. Inasmuch as the statute is thus specific as to the various classes of bonds within its purview it necessarily follows that the list of enumerated obligations cannot be extended and that in consequence no bond is subject to the payment of the specific tax and the consequent exemption, unless it falls within some one of the character of obligations specifically mentioned.

I do not understand that it can be claimed that the bonds issued by the special taxing districts to which Messrs. Bowman, Cost & Company refer are in any sense "secured debts" within the meaning of section 1 of Act 142 of 1913. Such being the case, I am constrained to the opinion that they cannot be regarded as being within the scope of the act as amended by House Enrolled Act 105 passed at the last session, so as to enable the holders thereof to pay the specific tax and thus secure exemption under the general law. It is necessarily implied that the legislature in enumerating the list of obligations referred to above intended thereby to exclude all others even though of similar character. In other words, the legislature has itself defined the expression "municipal bond" as used in the title of the act and has refrained from using any general expression in the measure itself that can be deemed to include bonds other than those specifically named.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

PUBLIC HEALTH. Tuberculosis is a dangerous communicable disease within the meaning of section 4424, C. L. 1897.

July 15, 1915.

Mr. Herbert C. Hall, Prosecuting Attorney, Ionia, Michigan:

Dear Sir—You have recently requested the views of this Department with reference to a situation that has arisen in your county. As I understand the matter, two indigent patients afflicted with tuberculosis have been returned to the county by the officials of the State Sanitarium on the ground that they are undesirable inmates of that Institution. The question now arises as to the manner in which these persons are to be cared for. It appears that the board of supervisors has not as yet made provision for these or similar cases.

Section 4424 of the Compiled Laws of 1897, as amended by Act 98 of 1909, points out the procedure that shall be observed in caring for persons that are infected "with a dangerous communicable disease." That section is undoubtedly broad enough in its scope to apply to the cases that you have stated if it can be said that tuberculosis is a dis-

ease of the character mentioned therein. I am impressed from a consideration of this statute in connection with other provisions along the same line that it must be so regarded. Clearly it was the purpose of the legislature in the enactment and amendment of the section above cited to provide for the case of any person affected with a dangerous communicable disease and also to guard against infection. Accordingly reference was made in general terms to such diseases rather than by specific designation. It is significant to note also in this connection that at the session of 1909, when this section was amended, Act 27 was passed specifically declaring that tuberculosis shall be regarded as an infectious and communicable disease. That it is properly to be considered also a dangerous disease can, I believe, scarcely be denied. These measures are, of course, remedial in character and designed to promote the health and safety of the public. Such being the case, they are to be construed liberally and so as to carry out the legislative intent. It seems to me, therefore, that the two cases to which you have called specific attention should be dealt with on the theory that the patients are affected with "a dangerous communicable disease" within the purview of section 4424. If the local board of health of the township or city where these persons reside determine as a matter of fact that they are thus afflicted such determination must, I believe, be deemed to be controlling in view of the legislative enactments above referred to. I call your attention upon this proposition to the case of *Thomas vs. Supervisors of Ingham County*, 142 Mich. 319, in which it was declared by the Supreme Court that the board of supervisors may not substitute its judgment for the judgment of the board of health. It would seem to follow as a matter of inference from this decision that the action of the latter board, if within the scope of its authority, is binding and that accordingly expenses incurred in caring for indigent persons affected with dangerous communicable diseases must be allowed as a valid charge against the county.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

GAME AND FISH LAW. Under Act No. 28, P. A. 1915, transferring the game and fish department to the Public Domain Commission, the appointment of Deputy Wardens must be made by the Commission and their authority to appoint can not be delegated as the law now stands.

July 16, 1915.

Hon. A. C. Carton, Secretary Public Domain Commission, Capitol:

Dear Sir—Your communication of the 14th inst. received as follows:

"At the last session of the legislature an act was passed providing for the transfer of the powers and duties of the State Game, Fish and Forestry Warden to the Public Domain Commission and to define the powers and duties of the Public Domain Commission in relation thereto. This act, by the wording of the same, went into effect July 1, 1915.

Under the provisions of this Act, a copy of which is herewith attached, does the power to appoint all wardens and employes become a part of the duties of the Public Domain Commission, or is it vested in the Game, Fish and Forest Fire Commissioner which the Public Domain Commission has authority to appoint?

If the power to appoint deputies and employes is vested in the Public Domain Commission, could the Commission delegate that power to anyone else without legislative authority?"

In reply thereto would say that I have made an examination of the Act to which you refer which is entitled: "An Act to provide for the transfer of the powers and duties of the State, game, fish and forestry warden to the public domain commission, and to define the powers and duties of the public domain commission in relation thereto, and to repeal all acts or parts of acts which conflict therewith."

It is evident from a reading of this entire Act that it was the intention of the legislature, not only to empower the Public Domain Commission to appoint a game warden, but also to lodge in the Commission the supervision of the work pertaining to that Department and the appointment of all special assistants and deputy game, fish and forestry wardens. Your first question, therefore, should be answered in the affirmative.

Special assistants and deputy game, fish and forestry wardens under this Act, as under former Acts, are clothed with certain powers and duties with respect to the execution of the Game, Fish and Forestry laws of the State, and to that extent they are officers. The legislature has placed their appointment in the hands of the Public Domain Commission and there is no hint or suggestion in the Act that their appointment can be made by any other authority. It is a general principle of law that where the sovereign power is lodged in any person or body, such person or body may not delegate his duties or functions to any other person or body without legislative sanction. I am, therefore, clearly of the opinion that the Public Domain Commission would not be authorized to delegate the final appointment of special assistants and deputy game, fish and forestry wardens to any other person.

Trusting this fully answers your inquiries, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

P-pi
(O)

PARTITION FENCES. Maintenance of can be enforced only when both parties improve their lands.

July 20, 1915.

Mr. Frank F. Ford, Prosecuting Attorney, Kalamazoo, Michigan:

Dear Sir—I have before me a copy of your letter to this department of June 5th, the original letter not having reached this department. In your communication you ask for an opinion relative to the law pertaining to partition fences between adjacent land owners. The questions

you submit are: First, Whether or not land owners can be compelled to erect and maintain partition fences, dividing their lands from adjoining lands if one of the adjoining owners does not improve his lands. Second, If only one of the adjoining property owners improves his land can he compel the other owner who does not improve his land to erect and maintain his share of the dividing fence?

The statutes relative to fences and fence-viewers can be found in Chapter 83 of the Compiled Laws of 1897, section 2 of which provides that "the respective occupants of lands enclosed with fences shall keep up and maintain partition fences between their own and the next adjoining enclosures, in equal shares, *so long* as both parties continue to improve the same."

The Supreme Court of this State has held, in the case of Aylesworth vs. Herrington, 17 Mich. 417, that the duty of any person to keep up a partition fence is created by the statute in favor of and for the protection of the adjoining proprietor. Before that duty can become fixed so as to require him to keep in repair any particular portion of such partition fence, it must appear: First, That the adjoining proprietor improves his land; Second, That either by consent or by action of the fence viewers a portion of the partition fence between them has been assigned to him to keep in repair.

A review of the above mentioned Chapter will no doubt acquaint you with the law relative to partition fences and the statute above quoted seems to very plainly indicate that before erection and maintenance of partition fences can be forced both parties must continue to improve their respective lands sought to be divided by such fence.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

G-pi-O

DRAIN LAW. Language in application for construction of drain to effect that it shall be constructed by dredge or dredges, does not invalidate otherwise regular proceedings in connection with said application.

July 20, 1915.

Mr. Henry G. Reek, Ludington, Michigan:

My dear Sir—I have before me your communication of recent date in which you state that an application for the construction of a drain was filed with your County Drain Commissioner which contained the following language: "Such drain to be constructed by a dredge or by the use of dredges." You desire to know if the above quoted language contained in the application for the construction of the drain would invalidate assessments levied for benefits in connection with said drain when constructed.

If the application for the construction of the drain was regularly made, in accordance with the terms of the statute, and contained the proper number of signatures, and the drain commissioner has acted upon such application, and all proceedings were regular in connection with the assessments levied for benefits, the language contained in the

application, similar to that above quoted, would not affect the proceedings nor invalidate the assessments levied in accordance therewith.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

G-pi-O

MICHIGAN FARM COLONY FOR EPILEPTICS—PUBLIC PATIENTS. No authority for charging first year's maintenance of patient committed to such institution to the counties from which patients are committed except those transferred from the Lapeer institution.

July 20, 1915.

Hon. O. B. Fuller, Auditor General, Capitol:

My dear Sir—You have recently requested an opinion from this department as to whether the first year's maintenance of patients committed to the Michigan Farm Colony for Epileptics, under Act 173 of the Public Acts of 1913, is chargeable to the county from which the patient was committed, or whether the expense of such maintenance is a charge against the State from the beginning.

Act 173 of the Public Acts of 1913 establishing a farm colony for the humane, curative, scientific and economical treatment of certain persons, provides, in section 20 thereof, that the patients at such institution shall be classified into two classes: First, Public patients who are epileptic and are kept and maintained at the expense of the State or partially at the expense of the State as hereinafter provided; Second, Private patients who are feeble minded or epileptic and are kept and maintained without expense to the State. Section 23 of the Act provides for the commitment by the probate court, after hearing has been had relative to the financial responsibility of the patient or those legally liable for its support, and provides that if the Judge of Probate shall determine that the patient is in indigent circumstances and that there is no one legally liable against whom his support can be enforced, he shall be committed as a public patient.

Section 26 of the Act provides that the State of Michigan shall pay the Michigan Farm Colony for epileptics all the expenses of keeping and maintaining public patients therein, including their clothing and all other expenses. It also provides that an account of these expenses, verified by the oath of the medical superintendent, shall be sent to the Auditor General quarterly, who shall pay the same out of any moneys appropriated for that purpose, if there be any, and if not, then out of the general fund.

The Act is silent as to any authority to charge the first year's maintenance to the respective counties from which the several patients were sent, although section 36 of the Act provides that as soon as the Michigan Farm Colony shall be open and ready for the admission of patients, all epileptic persons who were theretofore committed to the Michigan Home for the Feebleminded and Epileptic at Lapeer, and who are proper subjects to be admitted as patients to the Michigan Farm Colony for Epileptics "shall at once be transferred from the said Michigan Home for the Feebleminded and Epileptic to the Michigan Farm Colony for Epi-

leptics by resolution of the joint Board of Control of said institution by and with the approval of the State Board of Corrections and Charities."

I am, therefore, of the opinion that no general authority exists for charging the first year's maintenance of patients committed to the Michigan Farm Colony for Epileptics, to the respective counties from which they were committed, except as to those patients who were transferred from the Michigan Home for the Feeble-minded and Epileptic at Lapeer, before the expiration of the first year after their commitment to that institution, in which case they would remain a charge against their respective counties, notwithstanding the transfer to the Michigan Farm Colony, until the expiration of one year from the date of their commitment to the former institution.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

G-pi-O

OIL INSPECTORS. Can not require oil companies to pay expenses to a certain place for purpose of inspecting oil.

July 21, 1915.

Mr. R. E. Barron, Howell, Michigan:

My dear Sir—I have before me your communication of the 16th inst. in which you desire a ruling from this department. You state that certain oil companies have in the past, called upon your deputies to inspect certain oils owned by them, but that when the deputies arrive at the place indicated the oil companies do not have the oil at that place ready for inspection. You desire to know whether the expense of your deputies in making the trip to such places and other expenses connected with such trips can be collected from the oil companies.

I find no authority under the statute for compelling owners of oil to pay the expenses of your deputies in such cases. Section 5 of Act 26 of the Public Acts of 1899 provides for the salaries of deputy oil inspectors, and further provides that the deputy inspectors shall be entitled to and allowed all actual and necessary expenses for hotel, railroad, stage and steamboat fares incurred in the discharge of their several duties, and provides the manner of payment of such salary and expenses and the fund from which the same shall be paid.

This section seems to cover the question of expenses of your deputies and specifically provides that such expenses, together with the salary shall be paid from moneys received as fees for inspecting oil, and I know of no practical way of compelling oil companies to bear such expense in case they fail to have their oil in readiness for inspection at stated times and places. No doubt you will be able to arrange a definite understanding with oil companies as to their future actions in this regard.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

G-pi-O

INDIGENT PERSONS. Expense of treatment of indigent person at University Hospital under House Enrolled Act 153 chargeable to county.

Expense of proceedings preliminary to commitment to be paid by the County upon order of Probate Judge.

July 21, 1915.

Hon. Edwin P. Kirby, Judge of Probate, Grand Haven, Michigan:

My dear Sir—I have before me your communication of the 6th inst. relative to House Enrolled Act No. 153 of the Session of 1915, same being an Act to provide free hospital service and medical and surgical treatment for persons afflicted with a malady which can be benefitted by hospital treatment who are unable to bear the expense for such care and treatment. You desire to know whether the Order of the Probate Court in such cases should provide that the adult person be admitted to the University hospital at the expense of the county and whether the physician's fee and the expense of taking the adult to Ann Arbor is to be paid by the county in the first instance on an order of the Probate Court.

Section 5 of the Act provides that the superintendent of the hospital shall keep a correct account of all medicine, nursing, food and necessities furnished to persons who are committed thereto under this Act and shall make and file with the Auditor General an affidavit containing so far as possible an itemized statement of all expenses incurred at said hospital in the treatment, nursing and care of said persons in accordance with the usual rates therefor fixed by the Board of Regents.

Section 6 provides that "upon the filing of said affidavit with the Auditor General, it shall be his duty to draw an order on the treasurer of the State of Michigan, payable to the treasurer of the University of Michigan, for the amount of such expenditure in accordance with the terms of the warrant drawn by him for University purposes."

Section 7 prescribes the fees or per diem of the county agent or superintendent of the poor in making investigation as to the financial condition of the patient, and also prescribes the fee of the physician appointed by the Probate Judge to make the examination, together with his necessary expenses incurred in making such examination, and provides that said charges for services and expenses, and all expenses incurred in conveying such patient to and from the University Hospital shall, when approved by the Judge of Probate ordering such services, be paid by the treasurer out of the general fund.

Section 8 provides that the county from which the patient is sent shall be liable for all expenses incurred under the provisions of this Act, and makes it the duty of the State to collect from the treasurer of such county an amount of money sufficient to reimburse the State for all money expended from the general fund in carrying out the provisions of the Act.

I am impressed from the language employed in the Act that its intent is that the county from which the person is sent to the hospital under the Act shall bear all of the expense incident to and connected with the care, maintenance and treatment of the patient at the hospital together with all expenses incurred in the proceedings preliminary to conveying such patient to the hospital. In accordance with the provisions of the Act, the expenses incurred in the care, maintenance and treatment of the

patient at the hospital are to be paid by voucher drawn by the Auditor General and charged back to the county from which the patient was sent, while the expenses of the proceedings preliminary to conveying the patient to the hospital should be paid by the county treasurer upon order of the probate judge before whom the proceeding was had.

Hoping I have made myself clear as to my interpretation of the Act, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-pi-O

JUSTICE OF THE PEACE. A temporary appointment by City Commission under the Home Rule charter to fill a vacancy not invalid.

July 21, 1915.

Hon. Coleman C. Vaughan, Secretary of State, Capitol:

Dear Sir—Your communication of the 19th inst. received enclosing a communication from Mr. Elmer E. White, County Clerk of Grand Traverse County, notifying you of the fact that a vacancy existed in the office of justice of the peace in the city of Traverse City and of the appointment by the city commission of Joseph B. Boyd to fill the vacancy. The county clerk questions the authority of the city commission to fill this vacancy by appointment and you desire the opinion of this department upon the proposition.

In reply thereto would say that the city of Traverse City is now operating under a home rule charter. It was first incorporated as a city under Act 424 Local Acts of 1895. Under this Act vacancies in the office of justice of the peace could be temporarily filled by appointment by the Mayor. See section 17, title IV. Said section of Title IV was amended by Act 631 Local Acts of 1905, which provides as follows:

“When a vacancy occurs in any elective office, it shall be optional with the council to order a special election. In case a vacancy shall occur in any of the offices in this act declared to be elective or appointive, the council may, in their discretion, fill such vacancy by the appointment of a suitable person, and any officer appointed to fill a vacancy, if the office is elective, shall hold by virtue of such appointment only until the first Monday of May next succeeding; if an elective office, which shall become vacant, is one of that class whose term of office continued after the next annual election, a successor for the unexpired term shall be elected at the next annual election.”

Section 28 of Act 279 of the Public Acts of 1909, as amended, provides that “in all cities now organized, which may hereafter amend or revise their charters under the provisions of this Act, all of the provisions of the present law, whether general or special, applying to any such city relating to the qualification, term of office, powers, jurisdiction, duties and compensation of justices of the peace and constables therein, * * * and all laws creating municipal courts * * * shall remain in full

force and effect," except as to the time and manner of nomination and election of judges, justices and court officers.

Section 33 of the above Act provides: "The provisions of the general law applying to the election, qualification and compensation of justices of the peace and constables in townships shall apply to the Justice of the peace and Constables above provided for except that in the first instance they shall be elected at the first election at which other city officers are chosen and the first incumbents shall hold office only until the next regular election for such officers as fixed by the State law: * * *"

It will be noted that neither section 28 nor section 33 of the home rule act contains any reference to the manner of supplying vacancies, and there is no special provision in any part of the home rule act relating to vacancies in the office of justice of the peace. This Act does not prohibit the adoption of a charter provision authorizing the city commission to fill vacancies in this office, and I am not prepared to say that such a charter provision would be invalid. In this connection I call your attention to the holding of the Supreme Court in *Edison vs. Almy*, 66 Mich. 328, in which a provision in the charter of the City of Grand Rapids authorizing the appointment to fill a vacancy in the office of Justice of the peace was held good where the appointment was temporary and pending an election.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

COUNTY COMMISSIONER OF SCHOOLS. One who is appointed to fill a vacancy in accordance with section 4819 C. L. 1897 as amended is not entitled to hold over.

July 21, 1915.

Mr. Robert Kirschman, Prosecuting Attorney, Battle Creek, Michigan:

Dear Sir—It appears from your letter of the 12th instant that the candidate who was duly elected to the office of county commissioner of schools at the April election has neglected to qualify for that office. Under the statute the new term began on the 1st of July. The incumbent of the prior term was appointed to the position by the board of supervisors to fill a vacancy. The question now arises as whether or not there is a vacancy existing in such office, or if the incumbent of the prior term may under the statutes pertaining to the office continue to hold the same and perform the duties thereof.

Whether or not the office is to be deemed vacant must necessarily depend upon the answer to the question: Is the office supplied with an incumbent who is legally qualified to exercise the powers and duties pertaining thereto? If the incumbent of the prior term is entitled to continue in possession, then it can scarcely be said, as I view the matter, that there is a vacancy which may be filled in accordance with the statute. On the other hand, if the incumbent of the prior term is not so entitled, then of course a vacancy does exist. Section 4819 of the Compiled Laws of 1897, as last amended by Act 222 of the Public Acts of 1909, pointed out the method by which a vacancy in the office of county commissioner of schools is to be filled. In accordance therewith,

the board of supervisors is empowered to appoint a person to fill the vacancy for the "unexpired portion of the term of office." It will be noted that the statutes do not in express terms authorize one who is so appointed by the board to hold after the expiration of the term and until a successor is chosen and qualified. It seems to me that the omission to make a provision of this character is rendered more significant by a reference to section 4809 of the Compiled Laws of 1897, as amended by Act 115 of 1907. It is therein specifically declared that a commissioner of schools who is elected shall continue in office four years and until a successor is elected and qualified. From a reading of the statutory provisions, the inference would seem to be warranted that it was the intention of the legislature that an incumbent of the office in question who has been duly elected thereto shall hold until the selection and qualification of a successor and that one who is appointed by the board of supervisors to fill a vacancy shall be entitled to the office only for the balance of the unexpired term.

It occurs to me that the decision of the Supreme Court in the case of *Conrad v. Stone*, 78 Mich. 635 is conclusive upon this proposition. In that case the title to the office of member of the board of school examiners was involved. The relator in the case claimed the right to hold over on the theory that an attempted election was invalid. He had, however, been appointed by the Judge of Probate in the manner provided in the statute for the filling of a vacancy in such office, for the balance of the term that he had enjoyed. Commenting upon this phase of the case, the court said:

"But, had there been no election, the relator was not entitled to the office. It is only *elected* officers who hold until their successors are elected and qualified. Mr. Conrad was appointed to fill a vacancy and he could only serve out the unexpired term. Had there been no election by the board as claimed by relator, there would have been a vacancy in the office which the Judge of Probate could have filled by appointment until the first Tuesday of August after the appointment."

As before suggested, I am impressed that this decision must be deemed to be conclusive as to the right of the incumbent of the prior term who was appointed to fill a vacancy therein to hold over for the present term. The case of *People v. Lord*, 9 Mich. 227 is not, as I view it, authority for a contrary doctrine. That case was decided under statutory provisions substantially different than were involved in *Conrad v. Stone*, and different from the provisions of the law relating to the filling of vacancies in the office of county commissioner of schools and the tenure of the person so appointed. The language above quoted from the opinion of Justice Champlin in *Conrad v. Stone* indicates that the court had in mind the clauses of section 3718 of the Compiled Laws of 1897, which had been in force for many years prior to the decision. Inasmuch as it was expressly held to be inapplicable in that case, it cannot be regarded as controlling in the instance that you have stated. Rather, as declared by the court, it applies to elected officers, granting thereto the right to hold over until the election and qualification of a successor.

Subdivision 7 of section 1155 of the Compiled Laws of 1897 expressly declares that the refusal or neglect of the candidate elected to take the

oath of office or to qualify shall cause the office involved to become vacant. In view of the circumstances as stated by you and in view of the further fact that the incumbent of the prior term is not entitled to hold over for the reason above indicated, it follows that a vacancy must be deemed to exist in the office of County Commissioner of schools in your county. Such being the case, section 4819 of the Compiled Laws of 1897, as amended, should be observed and some duly qualified person should be appointed by the board of supervisors for the balance of the term. It being determined that a vacancy exists the provisions of this section would seem to be such as to leave no possibility of question as to the duty of the board nor as to the time for which the appointment to fill the vacancy may be made.

Respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

SCHOOL LAW. The validity of a resolution passed at an annual school meeting may not be attacked because two non-residents of the district participated in the meeting when there was no actual fraud and the resolution was not affected by such participation.

A resolution adopted at the annual meeting to close the school for the ensuing year may not be rescinded at a subsequent special meeting.

July 22, 1915.

Mr. Jos. D. Stackable, Pinckney, Mich.:

Dear Sir—I note from your letter of recent date that some question has arisen as to the legality of the action taken by the electors at the recent annual school meeting upon the proposition of closing the school for the coming year and sending its pupils elsewhere. As I understand the matter two persons who were not residents of the district were present at the meeting and participated in the action taken. It does not appear that any objection whatever was made to such participation by these men, nor that there is any suggestion of fraud. You state that the result was not affected because these two non-residents were permitted to vote. It has now been proposed, however, that a special meeting of the district be called for the purpose of reconsidering the action in question, it being claimed by some residents of the district that the resolution to close the school was rendered invalid for the reason above suggested.

Based upon your statement of the facts, it does not occur to me that any question may now be raised as to the legality of the passage of the resolution referred to. There being no actual fraud and the resolution not having been affected by the votes cast by the two non-residents of the district who took part in the meetings, there would appear to be no basis for any such attack. Neither do I regard it as material that one of such non-residents seconded the motion to adopt the resolution. It does not appear that any question was raised at the time as to the right of the presiding officer to submit the motion to a vote; and the electors of the district expressed their will thereon. It is my opinion accordingly that the resolution as passed must be deemed to be valid.

The voters of the district having decided at the regular annual meeting that the school shall be closed for the coming year, it is not, under the statute, competent for them now to reconsider that action at a special meeting and direct that a school shall be maintained in the district. The decision of the Supreme Court of this State in the case of *Meek vs. Carpenter*, 178 Mich. 547, is conclusive upon this proposition. It was there held that such attempted action taken at the special meeting was invalid. In other words, when the electors of the district decided at either an annual or special meeting to discontinue the school for the ensuing year they may not undo that action at a subsequent special meeting.

Trusting these suggestions will cover the matter to which you refer, I am,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

SCHOOL LAW. An annual meeting that is held without the giving of any notice is not valid in a city of the fourth class; but a special meeting may be called for the purpose of electing trustees.

July 23, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing:

Dear Sir—I am returning to you herewith a communication addressed to you by the county commissioner of schools of Clare County, in which reference is made to a school election held in the city of Harrison on the 12th instant. You have requested that I give to you my views with reference to the legal questions suggested by Mr. Aldrich's letter.

It appears that said city is a city of the fourth class, and through an oversight the secretary of the board of education neglected to give notice of the annual meeting as prescribed by the statute. On the day thereof, however, some of the voters of the district gathered at the central polling place, chose election inspectors and proceeded to hold an election in the manner contemplated by law. The result of the votes cast was reported in writing to the secretary of the board of education, and such report was accepted. A petition has, however, been circulated requesting that a special election be called for the 26th instant for the purpose of choosing officers of the district. The question arises as to whether or not the meeting held on the 12th of July was legal, and if in consequence the secretary of the board of education is required to accept the results thereof.

In accordance with the statute notice of the time and place of holding the election should have been given not less than fifteen days before the date thereof by posting notices and also by publication in one or more newspapers. The purpose of this provision is, of course, obvious. It was the intention of the legislature that the attention of the qualified voters in the school district should be challenged to the fact that a meeting was to be held. I am impressed that the requirement is one that may not be waived or avoided. It may be that a majority of the qualified voters of the district were actually present at the meeting

but I do not think that this fact can be permitted to alter the legal aspect of the case. We are confronted by a situation in which the positive mandate of the statute has not been complied with. Bearing in mind the purpose of this requirement of the law, it seems to me that obvious questions of public policy absolutely demand that it shall not be ignored. Consequently, I am constrained to the opinion that the meeting of the electors of the school district of the City of Harrison to which Mr. Aldrich refers cannot be regarded as legal. The attempted election of trustees was, therefore, a nullity and the board of education is without authority to regard it in any other light.

This brings us to a consideration of your second inquiry, namely, whether or not a special election may now be held for the purpose of electing trustees. The general primary school law of the State in section 20 of Chapter II refers to the powers of qualified voters of a school district and provides that such voters may "when lawfully assembled at the first and at each annual meeting or at an adjournment thereof, or at any special meeting lawfully called, except as hereinafter provided, * * * *"

Third, To elect district officers as herein provided, and to determine at what hour the annual meeting shall be held." Under the letter of this statute, it follows that the officers of a primary school district may, under some circumstances at least be chosen at a special meeting. My attention is challenged to no provision that can be construed as denying that power. The question is, therefore, presented as to whether or not this provision above quoted is applicable to the voters in a school district comprising a city of the fourth class. I challenge your attention in this respect to section 10 of Chapter XIII of the primary school law, the same being section 4774 of the Compiled Laws of 1897. It is therein declared:

"All provisions of this act shall apply and be in force in every school district, township, city and village in this State, except such as may be inconsistent with the direct provisions of some special enactment of the legislature."

In accordance with this legislative declaration, we must proceed upon the assumption that the above quoted provision does apply to school district of the City of Harrison unless there is some clause found in the fourth class city act that is inconsistent therewith. An examination of that act, however, fails to indicate any such inconsistent clause. Provision is made in said act for the holding of the annual election of school trustees and the procedure that shall be observed as pointed out. There is no specific declaration, however, that a special election may not be held, in accordance with the general school law, in case of failure to hold the annual meeting and elect trustees thereat.

Neither do I believe that any influence of this nature may be drawn from any provision of the chapter of the fourth class city act dealing with the public school system. It is my opinion accordingly that a special meeting may be called to elect trustees in such district when the annual meeting has not been held, or for some reason there has been a failure to take such action thereat.

It seems to me that this construction is supported by strong reasons

of public policy. The provisions of the statutes with reference to the holding of meetings, both annual and special, and the transaction of business at such meetings, are designed to grant to the voters who are duly qualified the right to express their will. It would hardly be in accord with this purpose if the failure to duly call the annual meeting would be given the effect of depriving the electors of the district of the privilege of selecting their trustees as contemplated by the law. I think it may be said that one purpose for the provisions in the school law with reference to the calling of special meetings on the petition of a certain number of electors was to take care of such a situation as is presented in the case under consideration. Doubtless the legislature deemed it inexpedient to leave the statute in such form that officials of the district by neglecting, either intentionally or unintentionally, to perform the duties placed upon them might thereby deprive the voters of the district of their right; nor do I think that such a construction should obtain as would permit a result of that kind. It is my opinion accordingly that the voters of the school district for the City of Harrison may proceed to elect their trustees at the special meeting to be held on the 26th instant, assuming, of course, that such meeting is properly called.

You also ask to be advised as to whether or not the board of education in a city of the fourth class may be required to publish their proceedings and a detailed financial report in a newspaper. Upon this proposition, I would direct your attention to section 3351 of the Compiled Laws of 1897, which reads as follows:

"The board shall, during the last week of the month of August, in each year, publish in some newspaper in the city a statement of the number of schools in the city, the number of teachers employed, and of the pupils instructed therein during the preceding year, and the branches of education pursued in such schools, and at the same time make and publish a statement of all the receipts and expenditures of the district for the preceding year, showing the items thereof, the sources of income, the amount of salaries paid to officers, teachers and employes, and to whom paid, the obligations incurred during the year and the amount of indebtedness outstanding and to whom payable; and also the estimates required to be made, as in the next section mentioned of the expenditures for grounds and buildings and for the support of the schools for the ensuing year, and the items thereof, all of which shall be recorded with the proceedings of the board."

It will be noted from this section of the statutes that an annual statement is called for, setting forth certain details with respect to the school system, and showing the receipts and expenditures of the district. Undoubtedly compliance with the requirements of this section may be compelled in an appropriate proceeding brought for that purpose.

Trusting these suggestions will cover your various inquiries, I am,
Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

SCHOOL LAW. An adjournment of a school meeting from the advertised place to a town hall for the purpose of accommodating the electors present is not of itself sufficient to vitiate the meeting but might result in so doing if thereby a sufficient number of electors were prevented from voting to change the result of such meeting.

July 23, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Capitol:

Dear Sir—We are, in receipt of yours of the 21st inst., wherein you state—

“At the annual meeting at Lawton on July 12th, there appeared to be more people in attendance than could be accommodated at the place where the meeting was advertised. After waiting ten or fifteen minutes someone moved that the meeting be adjourned to the town hall. This was supported and the meeting was adjourned to the town hall, about two hundred fifty-two votes being cast. There has arisen a question of the legality of this meeting, whether or not the adjourned meeting which elected the officers was a legal meeting. Two people were designated to remain at the first place of meeting to notify anyone who came to come to the adjourned place of meeting and to say that the adjourned place of meeting was the town hall. I would appreciate your opinion on this point.”

In reply, from the facts submitted it appears that the only question submitted is as to whether the claimed irregularity in adjourning the school meeting from the advertised place to the town hall was sufficient to vitiate the proceedings of the said meeting. A situation very similar was before the Supreme Court of this State in the case of *Farrington vs. Turner*, 53 Mich. 27. This was a quo warranto proceeding brought by the Attorney General on behalf of Farrington to ascertain the rights of Turner to the office of sheriff of Ogemaw County, and involved the legality of a general election held in the township of Edwards. From the facts it appeared that on the morning of the election the supervisor and justice of the peace met at the school house in district number one of said township and organized as inspectors of election, and without receiving any votes at that place, adjourned the election to the school house in district number two in said township, and on doing so announced the fact publicly to all present, and left a proper person at number one to notify all electors who came there to vote, of the change made by the board. The jury found, as a matter of fact, that the change was made in good faith by the inspectors, they believing they had the right so to do, and not to deprive any electors from voting, but for the purpose of accommodating a larger number of the voters. It further appeared from the testimony in that case that only two of the electors did not have an opportunity to vote because of the change and it did not appear that the failure of these voters to vote changed the result. The court in dismissing relator's petition held that the adjournment, in good faith, from one polling place to another was at most an irre-

gularity and that where the rights of candidates were not prejudiced thereby such irregularity was not sufficient to sustain the proceedings upon the part of relator against the successful candidate.

As before stated, the facts in the case cited are very nearly on all fours with the Lawton situation. Consequently, we are of the opinion that in the absence of fraud and unless a sufficient number of electors were thereby prevented from participating in the meeting so that the result would have been changed, the legality of the school meeting can not be successfully questioned because of the adjournment.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

SCHOOL LAW. A trustee in a school district organized under Act 176 of 1891 must receive a majority of all the votes cast in order to be declared elected; and in case no candidate receives such majority the prior incumbent holds over until the voters of the district select his successor.

July 23, 1915.

Mr. Michael J. Kennedy, Prosecuting Attorney, Ishpeming, Michigan:

Dear Sir—I have before me your letter of recent date with reference to the annual school election held in one of the township school districts in your county. It appears that in said district there were two trustees to be elected. The total number of persons voting at the election was 164. Owing to the fact that many electors voted for but one candidate instead of two, there was but one candidate that received more than half of the total number of votes that were cast. Under the statute governing the selection of trustees a majority of such votes is required for an election.

It does not occur to me that, under the wording of the statute, any candidate who receives at such school election a number of votes equal to less than one-half of the total number of persons participating in such election can be said in any event to be elected. The fact that some voters cast their ballot for but one trustee instead of for two cannot, as I view the matter, affect this conclusion. There would seem to be no satisfactory basis of any nature upon which it may be found that the total number of votes cast is other or less than the number of duly qualified voters taking part in the election. Consequently, I am constrained to the opinion that no alternative is open to us save to regard the total number of votes cast as equivalent to such number so participating. In accordance with these suggestions, it follows that but one trustee can be deemed to have been elected in the district to which you have reference. This brings us to the question as to whether or not there can be deemed to be a vacancy in the office of one trustee to whom no successor was chosen, that may be filled by appointment of the Board as provided in section 5 of the act. I would call your attention upon this point to that clause of section 2, which declares that a trustee shall hold his office until his successor has been duly elected and has filed his acceptance. The language of this section would seem to imply that

a trustee who has been duly chosen by the voters of a school district may continue to hold the office until the expiration of his term and the selection of his successor by the voters in the manner prescribed by the statute. If this view is correct, then it necessarily follows that there is no vacancy under such circumstances as are stated in your letter within the meaning of section 5. I think it may be said that the latter section contemplates action by the trustees to fill a vacancy only when there is no one who is entitled under the law to hold the office. In the instant case it would seem to follow as a matter of necessary implication from the provisions of section 2 that the prior incumbent is entitled to hold over and hence there is, as a matter of fact, some one who is legally entitled to fill the office and perform the duties thereof. It is my opinion, therefore, that such prior incumbent may hold over until his successor is chosen by the electors of the school district, either at a special or the next annual school meeting.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

LAKE BOTTOM LANDS. Sale of sand and gravel. Act 92 P. A. 1915 construed.

August 5, 1915.

Hon. A. C. Carton, Secretary, Public Domain Commission, Lansing:

Dear Sir—You have submitted for my consideration the following questions arising out of the provisions of Act 92 of the Public Acts of 1915 relative to the sale of sand and gravel:

"1. Do you understand that any riparian owner on Lake Michigan may take sand and gravel from under the waters of Lake Michigan, without application to the state for permission and without the payment of any compensation to the State?

2. Or, must such riparian owner apply to the state, and have the sand and gravel underlying the waters of the lake valued for one mile out, and then enter into agreement with the state for the taking of the same on certain compensation fixed?

3. Supposing a vessel owner operating out of this port should send a sand scow across the lake, and desire to take a load of sand from under the waters of Lake Michigan within one mile of the Michigan shore; and suppose further that this party desired to comply with the act in question.

(a) Would he merely get the consent of the riparian owner opposite whose land he took the sand?

(b) Or would he get the consent of the riparian owner and also apply it to your commission for an evaluation and lease?

(c) Or could he ignore the riparian owner opposite whose land he intended to take the sand, and simply apply to your Commission and pay the state what it might demand for the privilege?"

1. Answering your first question, your attention is called to the provisions of section 27 in part as follows:

"The owners and lessees from the State fronting upon Lakes Superior and Michigan * * * shall have exclusive right and

privilege of taking and removing marl, stone, sand, gravel and earth from the bed of any of the Great Lakes * * * adjoining and lying immediately in front of their respective lands * * * Provided, That the right and privilege of taking and removing marl, stone, rock, sand and earth shall not accrue to nor be exercised by any person, or persons, firm or corporation unless the same is included in the lease of such lands, or made the subject of a special clause of the lease, application for which shall be made in the same manner as provided herein with respect to leases for other purposes."

The above provisions unqualifiedly require that a lease from the State be obtained before any person can exercise the privilege of taking sand and gravel, etc., and your first question should, therefore, be answered in the negative.

2. It necessarily follows that your second question should be answered in the affirmative.

3. Your third question I will answer as follows: The mere consent of the riparian owner would not be sufficient to justify the taking of sand and gravel. The person taking the same would not only have to have the consent of the riparian owner but must also either have a lease from the State or a sub-lease from the riparian owner approved by the Public Domain Commission. It is my opinion that the riparian owner is given the exclusive privilege of taking the sand and gravel, but at the same time he can only exercise the privilege by obtaining a lease from the State therefor. The statute does not fix any definite time within which the riparian owner must exercise his right to apply for a lease, and accordingly only a reasonable length of time will be given him within which to exercise his right. Failure on the part of the riparian owner to exercise his right within a reasonable time would be deemed a waiver, and I am of the opinion that the Commission could then receive applications from others than the owner and lease the right of taking sand and gravel independent of the owner, this by virtue of the general rights of sovereignty, but otherwise in conformity with the provisions of the act.

Further, I am of the opinion that a riparian owner, having obtained a lease may sub-let his privilege to others provided the consent of the Commission be first obtained. In any event, the riparian owner cannot be ignored unless, as above indicated, he fails to exercise his privilege within a reasonable time, which time should be fixed by the Commission itself in regulation. Such a regulation might and possibly should provide for notice to the riparian owner so that he might have an opportunity to protect his rights.

You have also submitted an oral question as to whether the word "owners" as used in the first line of section 27 could be construed to include lessees from riparian owners other than the State. I think the ordinary rule should be applied that to constitute "ownership" there must be either a freehold tenure or possession under a land contract. In other words, tenure under a lease would not constitute ownership.

Very respectfully,

GRANT FELLOWS,

Attorney General.

P-v-O

P. S.—I return herewith communication from Messrs. Nash and Nash

of Manitowoc, Wis., from which the above inquiries were originally taken.

EXTRADITION. CITIZENSHIP. No practical way of compelling the return of a person who has violated the terms of his parole from a penal institution of this State and returned to Canada except through extradition.

August 5, 1915.

Hon. Nathan F. Simpson, Warden, Michigan State Prison, Jackson, Michigan:

In re Robert Moore, No. 9426.

Dear Sir—I have before me your communication of the 31st ult., relative to the above named person whom you state was paroled from your Institution September 8th, 1914, for a period of one year, violated his patrol June 13th, 1915, and is not at Leamington, Ont. You state the facts upon which you desire advice as follows:

When Moore was received at your Institution he gave his nationality as an American and his birthplace England. The indeterminate sentence record forwarded by the court in which he was convicted shows that his parents lived in Hudson, Ohio; while they were on a visit to England, he was born there, but that he had lived in Detroit, Michigan, since twelve years of age. After violating his parole he immediately went to Ontario, Canada, and upon being arrested by the officers at that place upon your request, for violation of his parole, with the intention of conveying him back to your Institution, he was released by the magistrate at Leamington upon the ground that said Moore was a British subject.

You further state that Moore now claims that he was born at Stratford, England, October 19, 1878; came to Pittsburg, Pa., via. New York in 1889; moved from Pittsburg to Cleveland in 1892; moved from there to Windsor, Canada, in 1896; moved from Windsor, Canada, to Detroit, Michigan, in 1903, and has lived at alternate intervals in the United States and Canada since 1903; and that Moore claims that he has never exercised the franchise of an American and has never made application for American citizenship. You desire advice as to what legal steps to take to have Moore returned to your Institution to serve out the sentence imposed by the court.

You do not state whether or not Moore's parents were American citizens at the time of his birth in Stratford, England. If his parents were American citizens and were only temporarily in England on a visit and were subject to the jurisdiction of the United States at the time of his birth, and returned to this country with his parents and lived in this country until reaching his majority, Moore would become an American citizen, entitled to all rights of citizenship and burdened with its responsibilities. While his citizenship is largely a question of fact to be determined upon proper proceedings instituted for the purpose of deporting him from Canada to this country, I know of no practical way of compelling the Canadian authorities to surrender him to your officer until proper requisition is recognized by the Governor-General of Canada.

If this man is a fugitive from justice and requisition is granted for his return to this country by the proper Canadian authorities, your officer would have the same right to bring him across the border that any other officer would have to bring any other fugitive who had been extradited.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

CHILDREN. RESIDENCE. All deformed children of parents who reside within this State and who are unable to provide proper treatment for the deformity or malady are entitled to the benefits of Act 274, P. A. 1913.

August 5, 1915.

Hon. Colonel O. Swayze, Judge of Probate, Flint, Michigan:

Dear Sir—I have before me your communication of the 30th ult., in which you ask if it is necessary for parents of a child to have a residence of one year within the county and State before such child would be entitled to hospital care and treatment for a curable malady or deformity as provided by Act 274 of the Public Acts of 1913. Section 1 of said Act 274 provides that whenever any Agent of the Board of Corrections and Charities, supervisor, superintendent of the poor, or physician *shall find within his county any child who is deformed or afflicted with a malady which can be remedied* and whose parents or guardians are unable to provide proper care and treatment, it shall be the duty of such agent supervisor, superintendent of the poor, or physician to make a report of such condition to the probate judge of the county *in which the child resides*. The act further specifically provides for investigation and authorizes the court upon a finding that the deformity or malady of the child would be improved and that the parents are unable to bear the expense of hospital treatment to order such child to be taken to the University Hospital at Ann Arbor for such care and treatment at the expense of the State.

The language employed in section 1 of the act seems to admit of no other conclusion but that *any child* who is deformed or afflicted with a malady which can be remedied is entitled to hospital care and treatment as is provided by the act, and it would make no difference whether the parents had obtained such a legal residence in the county as to entitle them to public assistance or whether they had not obtained such a residence, the duty of the agent of the Board of Corrections and Charities, supervisor, superintendent of the poor and physicians having knowledge of the existence of such children seem plain and unambiguous. I am, therefore, of the opinion that if the parents of such a child are residents of your county, notwithstanding they may not have gained a sufficient residence to entitle them to public aid nevertheless their deformed child, if below the age of seventeen years, would be entitled to the benefits of the act.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

DEPENDENT AND NEGLECTED CHILDREN. County superintendents of poor have no authority to commit to child caring or placing agencies at expense of county without an order from juvenile court.

August 9, 1915.

Hon. Harry L. Harris, Judge of Probate, Newberry, Michigan:

Dear Sir—I have before me yours of the 2nd instant in which you ask for an opinion as to whether the county superintendents of the poor have authority to commit, without petition to the juvenile court, dependent or neglected children to child caring and placing agencies and obligate the county to pay for the maintenance of such children at such agencies.

Act 6 of the Public Acts of the Extra Session of 1907, entitled: "An Act to define, and to regulate the treatment and control of, dependent, neglected and delinquent children; to prescribe the jurisdiction of the probate courts and the powers, duties and compensation of the probate judges with regard thereto; to provide for the appointment of county agents and probation officers and to prescribe their powers, duties and compensation," as amended, prescribes the necessary steps and proceedings to be followed in providing for the care, treatment and control of dependent and neglected children. This act places the disposition of such children with the juvenile court, or the juvenile division of the probate court, as established and prescribed by section 2 of the act, and it is only through that form and in accordance with the practice prescribed in this act that dependent and neglected children can be maintained and supported and educated at the expense of the county.

While there is nothing contained in this act that would prevent a parent or legal guardian from making a voluntary disposition of their child or ward through the county superintendent of the poor, I know of no law that would authorize the superintendents of the poor to place such children in homes or child placing agencies at the expense of the county, without complying with the terms of the above named act, known as the "juvenile court law."

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

TAXATION. POWER OF COUNTY TO IMPOSE TAX FOR STATE INSTITUTION LOCATED THEREIN. Unless the county has a special and peculiar interest in the object to be accomplished by the establishment of a State Institution within its boundaries, a tax levied by the county to aid the construction of such institution is void.

August 9, 1915.

Dr. E. B. Pierce, Superintendent, Michigan State Sanatorium, Howell, Michigan:

Dear Sir—I have before me your communication of the 29th ult. relative to the action of the supervisors of Midland County concerning the

location of the Central Michigan Sanatorium in Jerome Township, said county, in accordance with Act 398 of the Public Acts of 1913. In your communication you set forth at length a copy of a resolution passed by the board of supervisors of the County of Midland as follows:

"Be it resolved, by the Board of Supervisors of the County of Midland, that this Board acting for and in behalf of said county, hereby agrees and contracts with said State of Michigan, to secure and furnish to said sanatorium, on said site, in said Jerome Township, an adequate supply of pure water suitable for use of said sanatorium. Be it further resolved, that copies of this resolution be forthwith forwarded to our representative in the State Legislature, Hon. Clifford G. Olmsted and to State Senator, Hon. Augustus H. Gansser."

You state that the board of trustees of the State Sanatorium desire the opinion of this Department as to whether the above quoted resolution adopted by the board of supervisors of Midland County, April 14, 1915, imposes any obligation upon Midland County, if so what obligation.

Without going into the matter in detail, but taking the resolution as a whole, it amounts to nothing more than an offer on the part of the board of supervisors of Midland County representing the county to secure and furnish to the Central Michigan Sanatorium when erected in Jerome Township, Midland County, "an adequate supply of pure water suitable for use of said Sanatorium."

However, the chief obstacle tending to prevent the carrying out of this resolution on the part of Midland County would appear to be its lack of authority granted to it by the legislature. Section 8 of Article VIII of the Constitution of this State provides that "the legislature may by a general law confer upon the boards of supervisors of the several counties such powers of local, legislative and administrative character, not inconsistent with the provisions of this Constitution, as it may deem proper." There is nothing in the act establishing a Central Michigan Sanatorium in the Township of Jerome, Midland County, that would warrant the conclusion that the county was authorized to raise money by taxation for the purpose of aiding the construction or equipment of such an institution. The institution when established would be a State Institution in which the state as a whole would be interested and, except from its location, the county of Midland would have no particular local interest in the institution, further than as a part of the commonwealth.

The courts of last resort have held that the power of taxation vested in a municipality under the law must be exercised for a public and not a mere private purpose. Justice Cooley in delivering the opinion of the court in the case of *People v. Salem Township*, 20 Mich. 452, uses the following language:

"Taxation is a mode of raising revenue for public purposes, and as is said in some of the cases, when it is prostituted to objects in no way connected with the public interests or welfare, it ceases to be taxation and becomes plunder. * * *.

A State burden is not to be imposed upon any territory smaller than the whole state, nor a county burdened upon any territory smaller or greater than the county. Equality in the imposition of

the burden is of the very essence of the power itself, and though absolute equality and absolute justice are never attainable, the adoption of some rule tending to that end is indispensable.

As a corollary from the preceding, if the tax is imposed upon one of the municipal subdivisions of the State only, the purpose must not only be a public purpose, as regards the people of that subdivision, but it must also be local, that is to say, the people of that municipality must have a special and peculiar interest in the object to be accomplished, which will make it just, proper and equitable that they should bear the burden rather than the State at large, or any more considerable portion of the State."

The object to be accomplished by the establishment of the Institution in question, whether established in Midland County, or some other county within the State, would be the ultimate treatment and care of persons afflicted with tuberculosis, and the people of Midland County would be no more interested in that purpose and no greater benefits would result to the people of that county than to the State at large, and therefore, the people of Midland County would not have that "special and peculiar interest in the object to be accomplished," which would make it just, proper and equitable that they should bear the burden of supplying the Institution with water rather than that such burden should be borne by the State at large, and for that reason, I am forced to conclude that the action of the board of supervisors, as expressed in the resolution of April 14, 1915, and which is set forth in your communication to this Department is entirely without force and effect, ultra vires in its nature, and if accepted by the board of trustees of the Institution, would have no binding effect upon the county, and a tax levied for the purpose of meeting such an expense would be void.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

CHILD. The word "child" as used in Act 274, P. A. 1913, includes only those below the age of seventeen years. Those above that age are considered adults and fall within the terms of Act 267, P. A. 1915, when receiving hospital treatment for curable maladies or deformities at the expense of the public.

August 9, 1915.

Hon. William H. Murray, Judge of Probate, Ann Arbor, Michigan:

Dear Sir—I have before me your communication of the 26th ult., relative to Act 274, of the Public Acts of 1913, same being an act to provide for the medical and surgical treatment of children afflicted with a curable malady or deformity and whose parents are unable to provide proper treatment therefor.

You desire the opinion of this department as to whether the term "child" as used in said Act 274 includes all persons below the age of twenty-one years. Also, if the word "child" as used in the act does

not include all persons under that age, to what age does it extend as compared with Act 267 of the Public Acts of 1915.

Act 274 of 1913 provides that whenever any agent of the Board of Corrections and Charities, supervisor, superintendent of the poor, or physician shall find within his county *any child* who is deformed or afflicted with a malady which can be remedied and whose parents or guardians are unable to properly provide care and treatment, it shall be the duty of such agent, supervisor, superintendent of the poor, or physician to make a report of such condition to the probate court of the county in which such child resides. The act further provides that upon filing such a report, it shall be the duty of the Judge of Probate to cause a thorough investigation to be made through the county agent or superintendent of the poor, and if the Judge of Probate is satisfied that the parents or guardians are unable to provide proper medical or surgical treatment, and the physician appointed shall certify that in his opinion the deformity or malady is of such a nature that it can be remedied, the judge of probate shall enter an order providing that the child shall be sent to the University Hospital for treatment to be paid for by the State as provided in said act. Act 267 of the Public Acts of 1915 is an act to provide free hospital service and medical and surgical treatment for adult persons afflicted with a malady or deformity which can be benefited by hospital treatment and who are unable to pay for such care and treatment. The two acts differ in that the 1913 act speaks of *children suffering with a curable malady or deformity* and provides for hospital treatment at the expense of the State, while the 1915 Act specifically provides for the *treatment of adult persons* afflicted with a curable malady or deformity and at the expense of the county of which they are a legal resident. The evident intent of the legislature as expressed in the 1913 act was to include all children below the age fixed by the juvenile court law as proper subjects for attention by such court. To a certain extent, any child entitled to the benefits prescribed by the 1913 act and whose parents are unable to provide surgical or medical treatment for the malady or deformity would be considered a dependent child in that it would be dependent upon the public for certain needed hospital care and treatment. Therefore all children below the age of seventeen years would be considered, for the purposes of the 1913 act, to fall within its provisions, while persons above that age would be considered adults, and if in need of hospital care and treatment for a curable malady or deformity and were unable to provide themselves with the same would come within the provisions of the 1915 law.

Trusting I have made myself clear as to my interpretation of these two acts, I remain,

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

MOTOR VEHICLE LAW, 1915. Several provisions interpreted.

August 9, 1915.

Hon. Coleman C. Vaughan, Secretary of State, Lansing:

Dear Sir—I am in receipt of your communication of the 4th instant in which you request my opinion concerning certain provisions of Act 302 of the Public Acts of 1915, known as the Michigan Motor Vehicle Law.

Your first question relates to the exemptions given to municipalities. Section 1 defines the term "motor vehicle" as follows:

"The term 'motor vehicle' as used in this act, except where otherwise expressly provided, shall include all vehicles propelled by any power other than muscular power, except motor cycles operated by policemen or firemen on official business, also all motor vehicles including trucks owned and operated by municipalities: Provided, That the same shall be designated by proper signs in which department of said municipality said trucks are employed, traction engines, road rollers, fire wagons, fire engines, police patrol wagons, ambulances and such vehicles as run only upon rails or tracks."

It seems clear that as to municipal vehicles of the class above described, it is necessary that each such vehicle shall bear a sign showing the department in which the same is employed, and that all motor vehicles owned by municipalities shall be exempt from the operation of the law when so designated.

You have submitted a proposed blank application for motor vehicle registration under the above act. I have examined the same and believe that it contains all the questions required by the above act.

Your third question relates to the method of computing the registration tax on motor vehicles. You desire to know how fractional parts of a hundred pounds shall be dealt with in computing the tax based upon the weight of the machines. You suggest that it would be convenient if fractions could be disregarded in the final computations or if that cannot be done, if all under fifty pounds could be disregarded and all over fifty pounds be treated as an additional hundred.

The taxes on motor vehicles are fixed by section 7 and are to be computed on the basis of horse-power and weight, that is, say 25 cents for each horse-power, and 25 cents for each one hundred pounds of weight. The method of determining the horsepower and the weight is provided in section 10. As to horsepower for gasoline engines a formula is stated and it is expressly provided that "fractions shall not be considered in the final computations." The provision relative to weight is as follows:

"(d) The weight of any motor vehicle shall be taken as the weight fully equipped at which the manufacturer represents the case, or the weight named in the shipping bill: Provided, That if this be not known, the actual weight as determined on a standard scale shall govern."

It will be noted that this section is silent as to fractions.

The provision of section 7 relative to automobiles is as follows:

“(b) Before the registration of an automobile: (1) If an automobile operated by gasoline power, twenty-five cents for each horsepower plus twenty-five cents for each one hundred pounds of its weight * * *.”

Section 2 which relates to the application for registration, requires the applicant to state

“(b) The weight of such vehicle fully equipped as given by the manufacturer of such vehicle as the shipping weight, or its weight as shown on a standard scale;”

It thus clearly appears that the application must show the actual weight of the car, either as it appears from the manufacturers' records, the shipping bill or by standard scale. It will be noted that section 7, which prescribes the amount of the tax, is silent as to fractional parts of one hundred pounds of weight. It is similarly silent as to fractional parts of horsepower. On the other hand, as above stated, section 10 authorizes the disregard of fractions in the final computations as to horsepower and is silent in that respect as to weight. You suggest that this is probably due to oversight. I am rather impressed that it is not due so much to oversight as to the fact that a formula is required to determine the horsepower which may or may not give an exact result, while the question of weight can be determined exactly, not being dependent upon a formula. This being true, we can disregard the distinction made in section 10 as to fractions in computing horsepower and weight. Eliminating section 10, we may, therefore, look to the provisions of section 7 to determine the question. It will be noted that the provision “for each one hundred pounds of its weight” is repeated seven times in this section. It is apparent that the one hundred pounds is intended to be the unit and that a lesser unit was not intended. If the legislature intended that a rate of so much a pound should be charged, it would undoubtedly have so expressed it. For instance, twenty-five cents for each one hundred pounds could have been expressed as one-fourth of a cent a pound, or one cent for each four pounds. Not having so expressed it, I am of the opinion that the legislature intended that a rule of convenience should be adopted to avoid fractional computations, and hence that fractional parts of one hundred pounds should not be regarded in final computations. This, as I understand it, conforms to the rule adopted under the 1913 act which was held unconstitutional.

You also desire some instructions relative to the disposition of fees and taxes to be collected under the new act. Section 34 provides as follows:

“All fees paid to the Secretary of State as provided in this act shall be turned over to the State Treasurer and applied to the State highway fund, the remainder to be applied to the building and improvement of the highways of the State under such division of said fund and for such purposes as the highway laws of the State shall provide, to be paid out by the Highway Commissioner in accordance with the statutory provisions therefor: Provided,

That fifty per cent of the amount collected from the registered motor vehicles in each county shall be returned to the treasurer of each county to be used to maintain the highways by the local authorities: Provided further, That in counties not operating under the county road system, the board of supervisors shall apportion such tax received to the several townships and cities according to the assessed valuation, to be used by such townships and cities for the construction and maintenance of the highways. The Secretary of State shall certify to the Auditor General on January 1st of each year, or as soon thereafter as possible, the amounts received from the several counties for motor vehicle taxes under the provisions of this act, for the preceding calendar year; the Auditor General shall thereupon draw his warrant on the State Treasurer for such amounts as are due the several counties under the provisions of this section."

The revenues provided by this act consist of taxes upon motor vehicles, fees for chauffeurs' licenses, duplicate number plates and license transfers. It is apparent from reading section 34 in connection with the whole act that the word "fees" in the first line of section 34 is intended to include both taxes and fees. On the other hand, it is clear that counties should only receive fifty per cent of motor vehicle taxes and will not be entitled to fifty per cent of the additional fees. All sums collected under the act must be covered into the State Treasury and primarily placed to the credit of the highway fund. The remainder, after the counties shall have received their apportionment, will be available to the State Highway Department. In the cases of taxes collected from non-resident owners, no county in Michigan being entitled to fifty per cent of the same, the entire tax will remain in the highway fund. In the case of a non-resident corporation authorized to do business in Michigan and having a place of business in this State, it may be regarded as a resident of the county in which such place of business exists and such county would be entitled to its share of the tax.

Trusting this covers your various questions, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

P-v-O

RAILROAD COMMISSION. CORPORATIONS. Two-thirds vote of a joint stock company is sufficient to authorize incorporation where the articles of association of such joint stock company provide for a transfer of property upon such vote.

August 10, 1915.

Michigan Railroad Commission, Lansing Michigan:

Gentlemen—We are in receipt of yours of the 6th instant with reference to the Cambria Rural Telephone Company wherein you stated

"A joint stock company or association, known as the 'Cambria Rural Telephone Company,' with headquarters at the village of Cambria, have made application to this Department for authority to incorporate. It appears that by Article 21 of their articles of

association, they feel they have a right to incorporate upon a vote of two-thirds of the share-holders, which article reads as follows:

‘The property of this company shall not be sold or transferred to any other company without a concurrent vote of two-thirds of all of the members at the time of such sale, etc.’

We are pleased herewith to hand you copy of the articles of association, and ask you to be kind enough to advise us promptly as to the required number of shares to authorize the incorporation.”

In reply we are of the opinion that a two-thirds vote of all the members of the company is sufficient to authorize incorporation. Section 21 of the articles of association above quoted provides that the property of the company may be sold or transferred upon such vote. If the entire property of this company as presently constituted was sold, a dissolution of the joint stock company would be effected. Consequently it is within the power of two-thirds, under the articles, to bring about a dissolution of the joint stock association. If the company is incorporated a two-thirds vote will not, of course, be sufficient to compel the minority to become part of the corporation, but such minority might refuse to continue as members of the corporation and could require the corporation to take over and pay for the property of such members.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-v-O

Articles of Association returned.

SCHOOL LAW. The resignation of a member of the board of education may be properly tendered on the day of the annual meeting, to such meeting, and a successor to fill the unexpired term caused by such resignation may then and there be chosen.

August 10, 1915.

Mr. Earl L. Burhans, Prosecuting Attorney, Paw Paw, Michigan:

Dear Sir—We are in receipt of yours of the 4th instant with reference to the controversy that has arisen respecting the board of education of District No. 8, Antwerp Township, Van Buren County. From your communication, it appears that at the recent annual meeting of said school district, one of the members tendered to the said meeting her resignation and that the meeting immediately elected a successor; that the member who resigned has been advised that she is still a member of the board for the reason that the said resignation was not tendered to the board of education, and that consequently the election of a successor was for this reason illegal. You request our opinion as to whether the attempted resignation of the member Cornish created a vacancy on the said board and whether the action of the annual meeting in choosing a successor was legal.

In reply you are advised that in our opinion the resignation of the member Cornish, made to the annual meeting, was regular and that the electors at said annual meeting had the right to choose her successor in the manner indicated in your communication. Section 2 of Chapter

10 of Act 164 of the Public Acts of 1877, as amended, the same being compiler's section 120 of the general school laws, provides in part as follows:

"The board of education shall have power to fill any vacancy that may occur in its board until the next annual meeting * * *."

It is apparent from the foregoing quotation that ordinarily the resignation of a member of the board should be tendered to the board of education and that such board should fill the vacancy but the term of the person chosen shall expire at the time of the next annual meeting. In the instant matter the resignation was tendered at the time of the annual meeting and if it had been tendered to the board of education at that time, the said board would have had no authority to choose a successor because the vacancy could only be filled at that time by the electors. Hence in our opinion it was entirely proper that the resignation be tendered to such meeting. We apprehend that this sufficiently answers the various inquiries propounded.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

SCHOOL LAW. A high school can be established in a township school district organized under Act 176 of 1891 only on the direction of the voters of the district in accordance with the general school law.

August 16, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Capitol:

Dear Sir—I have before me your communication of the 13th inst., in which you submit the following inquiry: "Has the school board of a district operating under Act 17, Public Acts of 1891, as amended, the authority to establish a high school in the district without a vote of the people?"

The measure referred to after outlining in section 1 the procedure that shall be observed in order that its provisions may be adopted and the township organized as a single school district declares that after the adoption of said Act and the election of officers, and the township "shall become a single school district which shall be subject to all the general laws of the State, so far as the same may be applicable, and said district shall have all the powers and privileges conferred upon graded districts by the laws of this State, all the general provisions of which relating to common or primary schools shall apply and be enforced in said district, except such as shall be inconsistent with the provisions of this Act."

My attention is called to no specific provision of the Act that in my opinion can be construed as conferring upon the Board of Education of the township district, the authority to establish a high school on its own initiative. Section 8 indicates in detail the authority that the Board may exercise but no mention is made therein of the establish-

ment of a high school. It follows accordingly that, in this respect, the provisions of the general primary school law of the State must control.

Chapter X of said law relates to the establishment of graded school districts and the maintenance of high schools therein. In accordance with the second subdivision of section 3 of this chapter a high school may be established only when the electors of the district have so voted at an annual or special meeting. I am constrained to the opinion that this clause is applicable to township school districts organized in the Upper Peninsula pursuant to Act 176 of 1891 and that in consequence a high school may not be established in such district except upon the direction of the voters expressed in accordance with the general school law.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

JUVENILE COURT. When a delinquent child is placed on probation on condition that a sum of money be paid to persons injured by him collection of such amount from the father of the delinquent cannot be enforced.

August 17, 1915.

Hon. H. S. Karcher, Judge of Probate, West branch, Michigan:

Dear Sir—I have before me your letter of the 16th instant enclosing certified copy of the proceedings taken in the matter of Arlie Warner, a dependent and neglected child. It appears that an order in said proceeding was duly made by you as Judge of the juvenile court by the terms of which this boy was required to pay a portion of the expense for medical attendance which has been caused to the complaining witness against him as a result of a vicious assault made upon him by said delinquent and his brother. The father of the boy, however, refuses to pay this amount. You have asked my views as to whether or not he may be compelled so to do.

The juvenile court law, in section 5 thereof, makes specific provision for the placing of a juvenile on probation subject to such conditions as were imposed by you upon this delinquent. There is no way suggested, however, by which the requirement that damage inflicted shall be made good by the payment of a sum of money may be enforced. Of course, a child upon whom such a sentence is imposed becomes the ward of the court and if a condition of this character is not fulfilled, the court may make such further disposition of the case as he may deem expedient proceeding upon the supposition that the conditions of the probation have been violated. It occurs to me that this is the only practical solution of the case that you have stated. Actual collection of the money from the father of the boy cannot be enforced. In other words, actual observance of the conditions of the probation may not be compelled under the statute. Rather there is no recourse in such a case other than to make such further disposition of the delinquent child as

may be considered proper. I am returning the certified copy submitted with your inquiry.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. The cutting of noxious weeds within the limits of an incorporated village is subject to the control of village authorities and the expense should be borne by the village rather than by the township.

August 17, 1915.

Mr. D. A. Line, Township Clerk, Mancelona, Michigan:

Dear Sir—Your letter of the 16th instant in which you request an opinion with reference to the cutting of noxious weeds within the limits of an incorporated village is before me. You ask to be advised as to whether the township or the village should bear the burden of expenses incurred in this manner.

Insofar as townships are concerned Chapter 24 of the general highway law controls this matter. Said chapter, however, refers specifically to road districts and its provisions generally are inconsistent with the idea that it was intended to apply to incorporated villages. It was doubtless the intention of the legislature that the destruction of such weeds in both cities and villages should be carried out in accordance with charter provisions and ordinances adopted by the common council or other legislative body in accordance with such charter. The council in each village that is organized under the general laws of the State is invested with authority to adopt such measures as may be necessary to properly preserve and care for streets and highways within the corporate limits and to safeguard the interests of the inhabitants. It occurs to me that the matter should be taken care of in this way, and that township officials have no authority under the general highway law to proceed to cut weeds within the corporate limits of a village or to charge the expense thereof to the township. Rather as suggested, the matter should be taken up by the village officers, acting in accordance with charter provisions or local ordinances, and the expense is, of course, to be borne by the village.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. Under section 11 of Chapter 5 of the highway law, as amended by Act 355, P. A. 1913, State reward money need not be devoted to the payment of bonds issued after the amending act became operative.

August 17, 1915.

August L. Johnson, Township Clerk, Reed City, Michigan:

Dear Sir—I note from your letter of the 14th instant that your township has issued bonds for the purpose of raising money to construct so-

called State reward roads. It appears that such roads have been built and that a certain amount of State reward money has been received from the State, and the question has now arisen as to the purpose or purposes for which this money may be used. The point at issue is as to whether it must necessarily be devoted to the payment of the principal of the bonds, or if, on the other hand, it may be used to build more State reward roads.

Section 11 of Chapter 5 of the general highway law as enacted in 1909, and as amended by Act 148 of the Public Acts of 1911, contained a provision to the effect that when State reward money was received by a township, and bonds had been issued for the purpose of raising money to construct the road, such reward money might be used only for the purpose of paying the principal of the obligations. Said section was, however, further amended at the legislative session of 1913 by Act 355 of the Public Acts of that year, and the provision referred to was omitted. It appears from your statement that none of the bonds issued by your township were sold until after this amendment of 1913 became operative. It follows, therefore, that such bonds must be deemed to have been put forth subject to the provisions of the statute as modified by Act 355 of 1913. The provision referred to having been stricken from the law, it does not apply to your obligations and, therefore, the State reward money that is received need not necessarily be used in paying the principal of the bonds. Under the law as it now stands, it may be devoted to such purposes as the township may desire and if it is deemed expedient to use it for the construction of more State reward roads, no objection to the legality of such course would seem to be tenable.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

LIQUOR LAW. A beverage that contains alcohol may not be manufactured in a county where the Local Option Law is in force.

August 17, 1915.

Torval E. Strom, Escanaba, Michigan:

Dear Sir—This department is in receipt of your letter of recent date in which you request an opinion as to whether or not a plant for the manufacture of a beverage containing less than one-half of one per cent of alcohol may be maintained in a county that has adopted the provisions of the local option law of the State.

The first section of said Act declares that: "It shall be unlawful for any person, directly or indirectly, himself or by his clerk, agent or employe to manufacture, sell, keep for sale, give away or furnish any vinous, malt, brewed, fermented, spirituous or intoxicating liquors, or any mixed liquor or beverages, any part of which is intoxicating, or keep a saloon or any other place where any such liquors are manufactured, sold, stored for sale, given away or furnished in any county" after the provisions of the law have been adopted. This clause has heretofore been construed by this department as forbidding, in any such county, the manufacture of

any liquor or beverage which contains alcohol. It will be noted that if any part of a given liquor or beverage is intoxicating the statute in terms applies. If, therefore, any alcohol whatever be found therein the conclusion can not be avoided that a part thereof is intoxicating. In the case that you have stated, therefore, I am constrained to the opinion that a plant of the character referred to can not be maintained for the purpose of manufacturing a beverage containing even the low per cent of alcohol mentioned, without rendering the individuals concerned liable to a prosecution for a violation of the statute. Stated somewhat differently the amount of alcohol that a beverage of this kind may contain is not the main point at issue. Rather the inquiry must be in each case, does the beverage contain any alcohol? If this question is answered in the affirmative then, in my opinion, the conclusion above suggested must necessarily be reached.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

HIGHWAY LAW. The township board, under section 10 of Chapter 2 of the Highway Law has the right to prescribe the wages of employes who are paid out of the highway improvement fund.

August 17, 1915.

Mr. Charles E. Resseguie, Custer, Michigan :

Dear Sir—I note from your letter of the 16th inst. that you are highway commissioner of your township and that some difference of opinion has arisen between yourself and the township Board as to the wages that should be paid to employes working upon the highways within the township. It does not appear from your statement whether the work that is being done is in the nature of repair work, or whether the employes in question are engaged in permanently improving the highways of the township. I assume, however, that the labor is of such a nature that the cost thereof is to be paid out of the highway improvement fund rather than out of the road repair fund. If this assumption is correct, I would direct your attention to section 10 of Chapter II of the General Highway Law which contains the following provision: "The highway improvement fund shall be expended by the township commissioner, under the direction of the township board, in laying out, building and permanently improving or repairing highways and bridges and in the employment of labor, purchasing of materials, tools or machinery to be used therefor." You will note from this provision that moneys from the highway improvement fund that are used in the employment of labor are to be expended under the direction of the township board. It occurs to me that this must be construed as investing the Board with the authority to say what amount shall be expended for labor and also the daily wage to be paid to employes. It seems apparent that the Legislature intended to confer upon the Board the right to control the highway improvement fund. The determination of matters of detail must be regarded as incidental to the exercise of the power thus conferred upon the Board.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

HIGHWAY LAW. Money may not be expended by a township out of the highway improvement fund for the purpose of maintaining electric lights.

August 18, 1915.

Mr. W. N. Guy, Township Clerk, Tekonsha, Michigan :

Dear Sir—I am in receipt of your letter of the 17th inst. in which you request my views as to the legality of expending money out of the highway improvement fund of your township for the purpose of maintaining two electric lights upon a certain highway within the township, outside of the corporate limits of the village of Tekonsha.

The purposes for which the highway improvement fund may be used are indicated in the statute. I would direct your attention particularly to section 10 of Chapter 2 of the General Highway Law of the State. In accordance therewith such money is required to be used "in laying out, building and permanently improving or repairing highways and bridges, and in the employment of labor, purchasing of materials, tools or machinery to be used therefor."

I am impressed that this provision contemplates the use of such money for the actual and permanent improvement of public roads, and for no other purpose. It does not occur to me that the establishment and maintenance of electric lights upon any road can be deemed to be such an improvement as is contemplated by the statute. Undoubtedly the maintenance of the lights at the place indicated would facilitate travel and aid to the convenience of the public to a certain extent; but the roadway itself would not hereby be affected or improved. Neither can it be said that such lights are in the nature of a permanent improvement. I am therefore constrained to the opinion that the provisions of the highway law may not properly be construed as authorizing the expenditure of money out of the highway improvement fund for the purpose mentioned.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O .

CIRCUIT COURT STENOGRAPHER. PROSECUTING ATTORNEY.

Is entitled to fees for taking preliminary examination in Justice court except in the first circuit. A special prosecutor may be appointed to conduct a particular case if the prosecuting attorney is disqualified on the ground of personal interest.

August 18, 1915.

Mr. A. W. Black, Prosecuting Attorney, Tawas City, Mich. :

Dear Sir—In some of the counties of the State the testimony taken before a justice of the peace on preliminary examinations in criminal cases is taken and transcribed by the circuit court stenographer. In such cases, the question arises as to whether or not said stenographer is entitled to receive the usual fees for this work, in addition to his salary as an officer of the circuit court. You have asked that I give to you my views with reference to this matter.

Section 369 of the Compiled Laws of 1897 declares that

"It shall be the duty of each circuit court stenographer to attend upon the court at each term, under the direction of the judge thereof, and take full stenographic notes of the testimony, and charge to the jury in the trial of each issue of fact before the court or jury."

It will be noted that this general enactment does not impose upon the circuit court stenographer the duty of taking testimony on preliminary examinations in justice court. Section 14 of the same act, same being section 376 of the Compiled Laws of 1897 refers to the stenographer in the first circuit and specifically provides that when so directed by the circuit judge the circuit court stenographer shall take stenographic notes of the testimony on preliminary examinations and coroner's inquests held in Hillsdale County. My attention, however, is not called to any special enactment of this nature with reference to any of the other judicial circuits. In accordance with Act 206 of 1905, an annual salary of \$1,500 is to be paid to the stenographer in the 23rd circuit and the proportion that each county in said circuit is to pay is specifically mentioned. It is not implied in said section, however, nor in any other provision of the statutes to which my attention is directed that such stenographer shall be required to perform duties not embraced within the general statute. I am impressed, therefore, that in the judicial circuits other than the first, the circuit court stenographer may not be required to take stenographic minutes of the testimony in preliminary examinations before a justice of the peace, as a part of his official duties. He is, of course, an officer of the circuit court, and under the general law his duties must be deemed to pertain to the work in that court and not to embrace other matters. Accordingly, if such stenographer takes testimony in a proceeding not within the scope of his official duty, he is entitled to compensation therefor.

You also submit an inquiry with reference to the course that should be pursued by a prosecuting attorney in case he desires personally to make a criminal complaint. Ordinarily, in such a case, the prosecutor takes the action suggested because of a personal interest in the matter. The exact course to pursue must depend largely in my opinion upon the exact nature of the prosecutor's interest. Quite possibly this is a matter upon which no rigid rule can be laid down. If, however, the interest of the prosecuting attorney is such as to render it improper for him to conduct the prosecution, steps should be taken to have a special prosecutor appointed in accordance with the statute for the particular case. It does not occur to me, however, that such an appointment must necessarily be made until after criminal process has been issued and served; in other words, a special prosecutor is not required until the case is pending. This implies that the justice of the peace to whom the complaint is made may issue his warrant notwithstanding that the complaining party is the prosecuting attorney of the county, and as such invested with authority to approve or disapprove the issuance of the warrant. The purpose of the statutory provision along this line is to protect the public rather than to protect the accused and it may, I think, be safely assumed that no prosecuting attorney, even though he may have a personal interest in the case, will take the initiative in

instituting a criminal prosecution unless there is adequate foundation therefor.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

GAME AND FISH LAW. Under Senate Enrolled Act 119, perch brought in from Wisconsin may not be sold in Michigan.

August 19, 1915.

Mr. Edward N. Barnard, Prosecuting Attorney, Grand Rapids, Michigan:

Dear Sir—I am in receipt of your letter of the 18th inst., in which you request my opinion as to whether or not, under the new game law which becomes operative on the twenty-fourth instant, it will be legal for a fish dealer in Grand Rapids to bring perch from the State of Wisconsin and sell them in this State. The measure to which you refer is Senate Enrolled Act 119, entitled: "An Act to protect fish in the inland waters of this State and to regulate the manner of taking, possession, transportation, size and sale of fish when taken from said waters, to provide penalties for the violation of this Act, and to repeal all acts and parts of Acts conflicting therewith." Section 2 of the measure in defining what shall be considered the "inland waters of this State" specifically excepts Lakes Michigan, Superior, Huron, St. Clair and Erie and the connecting waters and bays thereof. The Act further specifies the periods of the year during which particular varieties of fish may be taken from the inland waters of the State, as thus defined, and limits the number of each variety that may be taken.

I am impressed that your inquiry must be answered by a consideration of the construction to be placed on section 7 of the measure: It is therein declared: "It shall be unlawful for any person or persons to purchase, buy or sell or attempt to purchase, buy or sell any brook trout or any large or small mouth black bass, calico bass, white bass, sturgeon, blue gills, sunfish, perch, rock bass, wall-eyed pike or crappies, at any season of the year, or to have in possession any of the kinds of fish above named during the prohibited periods in which the taking or catching of such species is prohibited." Standing alone the language of this section would seem to permit of no exception of any character.

Construing it in connection with the definition of the expression "inland waters" found in section 2, I am impressed that fish caught from the waters of the Great Lakes, the connecting waters and bays thereof, can not be deemed to be within the purview of said section. We find in the Act itself a specific declaration that such waters are not within its scope. By necessary inference it seems to me that fish taken from such excepted waters may be disposed of without reference to this Act. In other words, the measure itself indicates that the Legislature intended to make this exception.

With regard to fish of the various varieties protected by this Act, that are brought in from other States for the purpose of being offered

for sale in Michigan, I am strongly impressed that different considerations must prevail. We find in the Act no provision tending to suggest that any exception is to be made as to such fish or that section 7 shall not apply thereto. Undoubtedly the various varieties of fish mentioned in this section, that are found in the inland waters of Wisconsin, can not be distinguished from the same varieties taken from the inland waters of Michigan. If, therefore, this measure be construed as permitting dealers to sell at pleasure certain varieties of fish caught in Wisconsin, the detection of violations of the Act would be rendered extremely difficult. I am strongly impressed that obvious reasons of public policy require that section 7 of this Act shall be strictly construed in such manner as to make it possible to carry out the legislative intent and to prevent infringements of the statute.

That the legislature has the power to forbid the selling in Michigan, or the storing herein, of game or fish taken in other States is too firmly established to be controverted. In the case of *Sillz vs. Herterburg*, 211 U. S. 31, a statute of the State of New York regulating the taking of game and forbidding the possession of protected varieties during the closed season, was assailed as unconstitutional. It appears that in this case certain protected game birds were imported into the State of New York, during the open season, from Europe. Kindred varieties were protected by the New York statute. An attempt was made to store these birds during the closed season and it was claimed that it was not competent for the State legislature to pass a regulation applying to such imported game. It was held, however, that it was within the police power of the State to adopt and enforce measures of this character designed for the protection of game and fish; and that the statute constituted no infringement of the provisions of the Federal Constitution relating to interstate commerce.

Likewise, in *Commonwealth vs. Savage (Mass.)* 29 N. E. 468, it was held that one who had in his possession lobsters imported from abroad was guilty of a violation of a statute of Massachusetts imposing a penalty upon any one for such act. Upon the rule of public policy involved, I wish to direct your attention to the case of *Phelps vs. Racey*, 60 N. Y. 10. The statute there declared it to be an offense to have quail in possession between the first of January and the twentieth of October. The defendant claimed that the birds that were found in his possession were brought in from other States and therefore he could not be convicted under this statute. In rejecting this contention the court said: "The time when or the place where the game was killed, or when brought within the State, or where from, is not made material by the statute; and we have no power to make it so * * *." That it was either killed within the lawful period, or brought from another State where the killing was lawful, constitutes no defense. The penalty is denounced against the selling or possession after the time, irrespective of the time or place of killing." To the same effect may be cited *Magner vs. People*, 97 Ill. 320; *Game Association vs. Durham*, 51 N. Y. Sup. Ct. 306; *State vs. Judy*, 7 Mo. App. 524.

The decision of the Supreme Court of Michigan, in *People vs. Dornbos*, 127 Mich. 136, also sustains this construction. This case arose under Act 151 of the Public Acts of 1897, as amended by Act 88 of the Public Acts of 1899. The second section of said Act made it unlawful

to have certain under-sized fish in possession or to sell the same. The defendant sought to show that the fish involved were taken in Indiana. Such testimony was, however, excluded, and the Supreme Court declared that it was rightly excluded. It was declared by Judge Long, speaking for the Court:

“Undoubtedly it would be an offense under the statute to bring into this State to market, or have in possession, prohibited fish weighing less than that prescribed by the Act.”

It seems to me that this decision and the other cases along the same line above quoted must be regarded as conclusive upon the question under consideration. It would seem to be clearly established that it is competent for the State to forbid the selling or storing within its borders of particular varieties of game or fish even though such be taken within the jurisdiction of another State or country. In order that evasions of a statute of this kind may be prevented a strict construction is necessarily required. It seems to me that section 7 of this measure can not be interpreted in any way other than as above suggested without opening the door to violations of the Act and rendering it practically impossible for officers of the law to detect infractions or to secure the requisite certainty of proof. It is my opinion, therefore, that your inquiry must be answered in the negative.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

STATUTES. Senate Enrolled Act 57, amending Act 217 of 1903, is prospective and section 32 thereof does not affect patients discharged prior to the 24th of August, 1915.

August 20, 1915.

James D. Munson, Medical Superintendent, Traverse City State Hospital, Traverse City, Michigan:

Dear Sir—Your letter of the 19th instant, with reference to the construction to be given a certain provision found in section 32 of Act 217 of the Public Acts of 1903, as amended by Senate Enrolled Act number 57, passed at the recent session of the legislature, is before me. The specific clause referred to, as amended, is as follows:

“A patient who has been discharged by the medical superintendent may, with the approval of the superintendent, be re-admitted to the asylum under the original order of admission at any time within *one year* after the date of such discharge.”

This clause is the same as is found in the original Act except that the period of one year has been inserted in lieu of the period of six months which must be observed under the statute at present in force. The point at issue is as to whether or not this amended clause can be deemed to be retroactive so as to affect patients discharged prior to the

time that such amendment becomes operative. You have requested my views upon this matter.

It is a rule of statutory construction that a measure will be deemed to be wholly prospective in its operation unless provided otherwise by the legislature, or unless it is necessary to give it a retroactive affect in order to carry out the intention of the legislature. In the instant case I am impressed that the usual presumption must obtain. There is nothing in the amending Act of 1915 that can be taken to imply that the legislature, or unless it is necessary to give it a retroactive affect ed before the amendment becomes operative. Stated somewhat differently, the discharge of a patient before the date when the amendment becomes operative on the twenty-fourth instant must be regarded as subject to the incidents of the statute at present in force and as made without reference to such amendment. One of these incidents is that the patient may be re-admitted on the original order of commitment at any time within six months; and the conditions of the discharge can not be taken to be affected by an amendment becoming operative subsequently thereto. I am constrained to the opinion, therefore, that Senate Enrolled Act number 57 can, in the respect indicated, be regarded as applying only to patients who are discharged after the same goes into effect, that is, on or after the twenty-fourth instant.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

TOWNSHIP LAW. The electors of a township may pass an ordinance permitting cattle to run at large in the highways. Such ordinance may be repealed at a special meeting.

August 23, 1915.

Mr. H. A. Harris, Rapid River, Michigan:

Dear Sir—Your communication of the 20th inst. has been received and contents thereof noted. It appears that in the year 1910 the electors of your township adopted an ordinance pursuant to which cattle have been permitted to run at large in the highways. This ordinance was passed, presumably, pursuant to section 2271 of the Compiled Laws of 1897, which said section confers upon the qualified electors of a township the authority to pass by-laws of this nature. You state that it is now desired to require owners of cattle to restrain the same, and that a petition to the Township Board is being circulated for the purpose of accomplishing this result.

Special meetings of the electors of a township are authorized by section 2295 of the Compiled Laws of 1897 for the purpose of transacting lawful business. Such a meeting is required to be called by the Township Board when a written request is presented to them in writing signed by not less than twelve electors of the township. Such request must specify the purpose for which the meeting is to be held. No reason occurs to me why a special township meeting may not be called to vote on the question of rescinding the ordinance or by-law enacted in 1910. It is not, however, competent for the Township Board to repeal such

by-law. Having been adopted by the electors pursuant to the statute it can only be changed by such electors. In other words, the Township Board must observe the ordinance so long as it remains in force.

There is a general law of the State with reference to permitting animals to run at large but the same is not operative north of the twelfth tier of townships, that is, it does not apply to the Upper Peninsula, nor to the northern portion of the Lower Peninsula. The Board of Supervisors may, however, adopt the provisions of the Act in any of the counties in which the same is not required to be otherwise observed. I assume from your statements, however, that the Board of Supervisors of Delta county have never taken any action and that in consequence this measure is not in force therein.

The township may not be held liable for damages that may result because of the operation of the by-law permitting cattle to run at large in the public highways. As above suggested, it was within the power of the electors to adopt such by-law and the people of the township are bound thereby. So long as the same remains in force there would seem to be no alternative except for the owners of land to fence against such animals. In this connection I would call your attention to section 2436 of the Compiled Laws of 1897, which provides in substance that no person upon whose land damage is done by animals permitted to run at large, may recover therefor unless the partition fences by which such lands are enclosed are constructed in accordance with the statute, that is, unless a legal fence is maintained.

Trusting that these suggestions will cover the matter to which you refer and will indicate the procedure to be observed in case a repeal of the by-law in question is desired, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

PUBLIC DOMAIN COMMISSION. Claims arising under the Act except for printing, etc., as specified in section 8 need not be presented to the Board of Auditors for approval.

August 23, 1915.

Hon. A. C. Carton, Secretary, Public Domain Commission, Capitol:

Dear Sir—On behalf of the Public Domain Commission you have requested an opinion from me as to whether or not vouchers for the payment of claims arising out of the carrying on of the work of the Commission, other than claims for printing and kindred work provided for in section 8 of Act 333 of 1913, should be submitted to the Board of Auditors for approval.

The present Commission owes its existence to Act 280 of the Public Acts of 1909. This measure has since been amended by Act 294 of 1911, and Act 333 of 1913. Section 2 of this measure specifically provides that salaries to be paid to certain officers and employes of the Commission shall be paid upon the warrant of the Auditor General, subject to the approval of the Chairman and Secretary of the Commission. Said salaries are directed to be paid out of the appropriation provided by

the Act. Section 15 which is the appropriation section directs that the money so appropriated "shall be paid to the said Commission upon the warrant of the Auditor General in the same manner as such appropriations are usually paid and shall be governed in all respects by the accounting laws of the State." Provision was further made in the amendment of 1913 whereby money might be obtained before the first of July of said year by making requisition upon the Auditor General for such amounts as might be deemed by the Commission to be necessary for immediate use. Section 8 to which attention is called in your inquiry makes provision for printing and distributing maps, circulars and advertising matters, and requires that claims therefor "shall be audited by the Board of State Auditors and paid from the appropriation hereinafter provided." It occurs to me that this specific direction with reference to the method of paying claims for printing, etc., must necessarily be construed as implying that it was not the intention of the legislature that other claims arising in connection with the work of the Commission should be audited in the same manner. It must be borne in mind that all expenses incurred under this Act are to be paid out of the specific appropriation provided thereby. In no case is payment out of the general fund of the State authorized, either directly or by implication. In view of the provision with reference to the payment of the salaries of officials and employees of the Commission and the turning over of money out of the appropriation when requisition is made therefor it would seem to follow without question that no claims arising under this Act need be submitted to the Board of Auditors, except as specified in section 8. The legislature seems to have intended that the procedure should be observed as in other cases where expenses are to be met out of the specific appropriation rather than out of the general fund of the State. I am impressed that such construction is the logical one in view of all of the provisions of the measure.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

LIQUOR LAW—PRAY ACT. Construction of Section 4 of the Pray Act considered.

August 23, 1915.

Mr. A. J. Waffan, Prosecuting Attorney, Iron River, Michigan:

Dear Sir—You have recently requested my views as to the construction to be placed on section 4 of Act 381 of the Public Acts of 1913, the so-called Pray Act. Said section is as follows:

"In any township, municipality or county in this State where the manufacture or sale of any of the liquors mentioned in section one is prohibited, it shall be unlawful for any person to keep, store or possess any such liquors in any room, building or structure other than the private residence of such person and which is not used as a place of public resort: Provided, That none of the provisions of this section shall apply to druggists authorized to sell such liquors, nor to persons possessing such liquors for medi-

cinal, mechanical, chemical, scientific or sacramental purposes, nor apply to such liquors in the process of transportation or in the possession of a common carrier."

You state that in an investigation recently conducted in your county intoxicating liquors were found, in one instance in the basement of a hotel, securely locked in a room therein; in another instance, such liquors were found in a bed-room of the proprietor of a boarding-house. Before local option was adopted in your county both of these places maintained a bar in connection with the hotel. The question arises as to whether or not the fact that these liquors were stored within buildings used as hotels is, in itself, sufficient to establish a violation of the statute. You have requested that I give you my views upon the matter.

This section was involved in the case of *People vs. Wheeler*, 22 D. L. N. 189, decided on the 18th of March last. In this case, which was a prosecution for a violation of the Pray Act, it appears that the liquor was stored in a small room on the first floor of a building that was used as a place of public resort. On said first floor there was a cigar and soft drink stand and also rooms to which the public was admitted and which were apparently used as dancing rooms and parlors. The defendant lived on the second floor and claimed the place as his private residence. It appears that the structure had been in previous years, used as a hotel. As suggested, the intoxicating liquors were kept in a room on the first floor, which was shown to be locked and to which the public, so far as the proof indicated, did not have access. The Trial Judge charged the jury, in part, as follows:

"Then, gentlemen, you are instructed that if you are satisfied from the evidence beyond a reasonable doubt that the defendant, Carl Wheeler, did keep, store and possess malt, brewed, fermented, spirituous, vinous or intoxicating liquors, to-wit, whiskey in large or small quantities, in a small room on the first floor of the building situated at No. 66 North Street, and you are further convinced beyond a reasonable doubt that some part or the whole of the first floor was open to the public and was a place of public resort, then I charge you that there can be no private residence or private room on the first floor of said building, and, under those circumstances, it would be your duty to convict."

In affirming the conviction the Supreme Court must necessarily be deemed to have approved the construction of the statute suggested in this charge. If, therefore, in the case that you have stated, any part of the basement in which the liquor was stored was open to the public there would seem to be no question but that the statute has been violated. The fact that the particular room in which such liquors were found was kept locked does not alter the situation. The same considerations would likewise apply in the other instance referred to, where the liquor was found stored in a bed-room used by the proprietor of the place. If any part of the floor of the building, on which this bed-room was situated, was used as a place of public resort, then, under the approved charge of the Court in the Wheeler case, the offense was committed. In this connection, the language of the statute would seem to be very significant. In accordance therewith intoxicating liquors may not be stored in any place except the

private residence of the person so storing them. Such private residence must not be used as a place of public resort. It seems to be implied by the specific provision in section 4 that the owner of every private residence can not claim the privilege. Rather, it is only when such private residence, or any part thereof, is not used as "a place of public resort" that he may do so.

This brings us to a consideration of the question as to whether or not such a private residence as is contemplated by the statute may be maintained in a hotel or similar public place. Upon this proposition Circuit Judge Chester in the Wheeler case gave the following instruction to the jury:

"If a private residence, or any part of it, is used as a store, shop, hotel, boarding place or a place of public resort, or for any other purpose than a private residence, then it is unlawful to keep, store or possess the liquors I have mentioned in such private residence."

The Supreme Court found that this statement had no application to the facts of the particular case inasmuch as it was shown that the first floor of the building kept by Wheeler was a place of public resort and that the liquors in his possession were found on that floor. Accordingly, this instruction was neither approved nor disapproved. Doubtless the charge of the Circuit Judge must be construed in connection with the facts of the particular case.

I am scarcely prepared to say that a private residence may not, under any circumstances, be maintained in a building a part of which is used as a place of public resort, that is, as a store, shop or hotel. Rather, I am inclined to the opinion that if no part of the floor of the building on which the private residence is claimed is open to the public, or accessible thereto, such a residence may be claimed. It seems to me that it can scarcely be said, in any and all conceivable cases that may arise that such a dwelling place is not a private residence, or that the public generally must be presumed conclusively to have access thereto. In certain cases, therefore, it would seem that a question of fact might necessarily be involved, of such a character as to render its submission to the jury necessary and proper. On the other hand, if any part of the floor of the building on which the private residence is claimed is open to the public, then it seems to be established by the Wheeler case that such residence, whether regarded as private or not, is not entitled to the privilege contemplated by section 4 of the Pray act. In other words, it is a presumption of law that the public has access thereto.

In accordance with these suggestions, I am inclined to the opinion that, in the instance in which liquor was found stored in the room in the basement of the hotel, the fact of such storing constitutes the offense. I infer that the basement of the hotel was not used as a residence and that a part thereof at least was open to the public and accessible thereto. As to this case, *People vs. Wheeler* would seem to be squarely in point. With reference to the second instance to which you have called attention, however, it is possible that a somewhat different condition obtains. You do not state whether any part of the floor on which the liquor was found stored was open to the public. If such was the case then the same conclusion must necessarily follow as is above suggested. If the evidence

upon the proposition as to whether or not such floor was so accessible is conflicting, then the question is for the determination of the jury. On the other hand, if there is no testimony tending to show that a part of such floor is open to the public then, as suggested, I am inclined to the opinion that if a private residence is shown to be established on such floor, the offense must be deemed, as a matter of law, not to have been committed. In either case the fact that the room in which the liquor was actually stored was kept locked is not material. In any case of this character the inquiries involved must necessarily be: First, was the intoxicating liquor stored in a private residence? Second, Was such private residence, or any part thereof, used as a place of public resort? The issue of fact in each such case, and which may be required to be submitted to the jury, is not, as I view it, as to whether or not the particular room was used as a part of the hotel or other public place or as a part of a private residence, but, rather, was the floor of the building on which such liquor was found, or any part of such floor, used as a place of public resort?

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

DRAIN LAW. A proceeding may not be maintained for the cleaning out of a portion only of an established drain. The County Board of Road Commissioners have the same authority to present a petition for the construction of a drain as has the Highway Commissioner of a township.

August 23, 1915.

Mr. Daniel F. Sullivan, Drain Commissioner, Maybee, Michigan:

Dear Sir—I am in receipt of your letter of the 17th inst., in which you refer to certain petitions that have been presented, for the cleaning out of the two drains in your county. It appears that one of said drains empties into the other, and that the latter passes through three townships. The Boards of said townships proceeded to pass upon the necessity of the cleaning out as provided by statute and determined adversely thereto as to the second drain. The cleaning out of the first drain, however, which is located wholly in one township, was determined by the Board thereof to be necessary. You state, however, that if such action is taken, and no work is done on the second drain, the result will be to flood certain land. You ask to be advised if such portion of the second drain as lies within one township may be cleaned out without reference to the balance of the drain.

I am impressed from an examination of the different statutory provisions concerned that this question must be answered in the negative. The cleaning out of drains is governed by the provisions of Chapter VIII of the General Drain Law. Said chapter does not seem to contemplate that when the drain crosses two or more townships such portion thereof as is situated within the limits of a single township may be cleaned out under the procedure outlined. In fact the positive provisions of the statute seem to exclude the idea that such action may

be taken. For example, it is provided that in such proceeding it shall not be necessary to describe the drain other than by reference to the recorded name thereof. When the application is made it is provided, by the statute at present in force, that the drain commissioner shall notify the clerks of all of the townships through which the drain passes and the Boards of all the townships affected are required to meet in joint session to pass on the necessity of the proposed work. It seems obvious that the singling out of a section of the drain is not within the purview of the statute. I am constrained to the opinion, therefore, that the action suggested by your first question may not be taken.

The sections of the drain law that are involved in a determination of this question were amended at the last session of the legislature by House Enrolled Act No. 126. This measure will become operative on the 24th inst. This amending Act will so change the present law as to render it unnecessary to submit to the Township Board, or Boards, the question of the necessity of a proposed drain, or of the cleaning out of an established drain. Rather such question is to be determined by the drain commissioner. The present law, however, contains a provision to the effect that when a petition to clean out a drain is passed on adversely no new petition may be presented within one year. The same provisions is retained in the amending Act. In the specific case to which you refer, therefore, no new petition can be acted upon until the lapse of such period.

You also ask to be advised as to the necessity of taking action on a petition for a drain, or for the cleaning out of an existing drain when presented by the Board of County Road Commissioners. Upon this proposition I would call your attention to section 19 of Chapter IV of the general Highway Law which confers upon said Board the right "to petition the County Drain Commissioner for an outlet drain as provided in section 8, Chapter 15 of this Act." The section referred to permits a highway commissioner, in case he is unable to procure a right of way for a drain to make application to the County Drain Commissioner in his official capacity. Thereupon such application is to be regarded as having the same force and effect as an application made pursuant to the drain law. It will be noted that this section refers to the construction of a new drain, rather than to the cleaning out of an existing drain.

Trusting that these suggestions will give you the desired information, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

JUDICATURE ACT. Sections 16, 17 and 18 of Chapter III considered and construed.

August 23, 1915.

Mr. K. M. Stiles, Register of Probate, Menominee, Michigan:

Dear Sir—I have before me your communication of the 18th inst., in which you request my views as to the construction to be placed on

sections 16, 17 and 18 of Chapter III of the new Judicature Act of the State.

Under the first of these sections the point at issue is as to whether or not the Judge of Probate or the Probate Register will be permitted, after said Act becomes effective, to draw up papers in connection with the administration of an estate, provided no compensation be received for such service. This section is substantially a merger and re-enactment of sections 663 and 664 of the Compiled Laws of 1897. In other words, section 16 does not, as I construe it, necessitate any radical change in any practice heretofore followed that has conformed with existing statutes. It will be noted that the inhibition of said section is not specifically directed against the rendering of any assistance along the lines suggested, but is, rather, intended to prevent the employment of the Probate Judge or Register as attorney in any matter or proceeding that may depend upon a decree or finding of the Probate Court.

Section 17 has reference to the fees that may be charged for drawing petitions, applications, etc., and forbids compensation therefor except for the making of attested copies and the certifying to the correctness thereof. This section supersedes, in part, sections 647, 2551 and 2555 of the Compiled Laws of 1897. As drawn the section tends to throw light on the construction of the preceding section and indicates clearly that it was not the intention of the legislature to forbid a Probate Judge or Probate Register from drawing papers. Such work is, however, done subject to the conditions that compensation may not be received therefor. In any case, however, where a copy of any paper is required by a party to any proceeding in the court, or by any one else, such copy may be charged for at the rate of eight cents per folio, with an additional charge of twenty-five cents for the certification. This charge will stand in lieu of the fee of ten cents per folio and twenty-five cents for certifying and attesting, allowed by section 2551 of the Compiled Laws of 1897, as amended.

I believe that these suggestions cover your inquiries as to the construction to be placed on section 17. I am unable to advise you as to whether or not there is any local Act affecting Menominee County requiring fees collected pursuant to this section to be paid over to the County Treasurer. If there is such a measure, however, you undoubtedly have a copy of it in your office; or in all probability your prosecuting attorney is familiar therewith.

I am impressed that section 18, which is wholly new, must be construed in such manner as to prevent the receiving of any compensation whatever from the publisher of any newspaper for collecting fees for publications that have been made in such paper. No other construction would seem to be permissible in view of the language used. Undoubtedly the inhibition was directed at this practice.

The expression "three successive weeks" must, I believe, be construed to mean a publication once each week for three weeks in succession. In answer to your specific inquiry, therefore, I am of the opinion that if such publication be made, for illustration, on August 7th, 14th and 21st, that such requirement is complied with and that a hearing may

be had on the order in accordance with the particular statutory provision that may be involved, based upon the fact of such publication.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

TAXATION. The payment of taxes for the current year on a series of notes may not be avoided by paying the specific tax under Act 142 of 1914 on the 14th of June.

August 30, 1915.

Board of State Tax Commissioners, Lansing, Michigan:
Attention Mr. Burtless.

Gentlemen: Under date of the 26th inst., you have requested my views with reference to the taxation of certain property belonging to the estate of one John M. Lamb. It appears that such property consists of a series of notes approximating the sum of thirty-six thousand dollars, payment of which is secured by a trust agreement. I infer from your statement that, in pursuance to said agreement, corporate stock has been placed in the hands of the trustee. On the 14th of June, 1914, the executor of the estate paid to the county treasurer the specific tax of one-half of one per cent upon the notes under the provisions of Act 142 of the Public Acts of 1913. The Board of Review of the city, however, refuse to remove the property from the assessment roll, but has retained the same thereon. The executor now petitions your Board to review the assessment roll and cancel the assessment of the notes in question on the ground that they are not subject to taxation under the provisions of the general tax law. You have requested my views as to whether or not the said notes were properly subject to the specific tax provided for by the Act of 1913 above cited.

The measure in question defines a secured debt upon which the specific tax may be paid as including:

"(1) Any bond, note or debt secured by mortgage or real property recorded in any State or county other than Michigan, and not recorded in the State of Michigan.

(2) Any and all bonds, notes or written or printed obligations, parts of a series of similar bonds, notes or obligations, the payment of which is secured by a mortgage or deed of trust of real or personal property, or both, which mortgage or deed of trust is recorded in some place outside of the State of Michigan and not recorded in the State of Michigan.

(3) Any and all bonds, notes or written or printed obligations, forming part of a series of similar bonds, notes or securities, as collateral security for the payment of such bonds, notes or obligations, under a deed of trust or collateral agreement held by a trustee. The term "secured debt" as used in this Act shall not include securities held as collateral to secure the payment of bonds taxable under this Act."

The case that you have stated would seem to fall within the third subdivision. As I understand the situation the series of notes is secured by a deposit of collateral security under an agreement held by a trustee. Such being the case it was undoubtedly competent for the executor of the estate to pay the specific tax of one-half of one per cent as contemplated by the statute.

It occurs to me, however, that the further question is involved as to whether or not said tax was paid in time to permit the exemption from taxation under the general law to be claimed this year. I note that the Board of Review was in session in the city in question on the second Monday in June and therefore infer that the general law of the State is followed in accordance with charter provisions, insofar as the assessment and collection of taxes is concerned. Section 107 of the general tax law specifically makes said law applicable to all cities and villages where not inconsistent with their charters. With this premise in mind I would call your attention to section 17 of the general tax law, which contains the following provision: "No change of location or sale of any personal property, after the first day of May in any one year shall affect the assessment made in such year." In the case that you have stated, therefore, if the property in question had been sold on the 14th day of June the payment of taxes thereon for the current year might not thereby be avoided. I am impressed that similar considerations must prevail where the exemption is claimed by virtue of the payment of a specific tax under statutes permitting such action and granting an exemption from taxation under the general law thereafter.

The various provisions of the law with reference to Boards of Review tend to confirm this construction. Section 30 of the tax law permits persons to whom property has been assessed to appear before the Board, either in person or by an agent, and to request that the valuation of the property may be changed. If sufficient cause is shown an assessment may be changed in such manner as to make the valuation of the property involved "relative just and equal." It is certain that authority is not granted to the Board of Review to strike from the roll property properly placed thereon by the Supervisor, or other assessing officer. In the case under consideration it seems apparent that the property was properly assessed by the assessing officer. The specific tax was not paid until the day on which the Board of Review was in session to hear complaints from taxpayers with reference to the valuation of property. As before suggested, if the property had been sold on such day, the Board of Review would have had no authority to remove the same from the roll, and I am impressed that the payment of the specific tax at such time, and the obtaining of the consequent exemption can not be given the effect sought to be claimed therefor. In other words, the liability for the payment of taxes on this property for the current year was not avoided by the payment of the specific tax at such time.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

TAXATION. Under Sec. 152 of the General Tax Law property omitted from the assessment roll may be added by the Board of State Tax Commissioners and the assessment should be made in the name of the person owning such property at the time fixed by the statute for the taking of the assessment by the supervisor.

August 30, 1915.

Board of State Tax Commissioners, Lansing, Michigan :
Attention Mr. Burtless.

Gentlemen—I have before me your letter of recent date with reference to the taxation of certain personal property in the Township of Eaton Rapids, Eaton County, Michigan. It appears that a certain resident of said township died in the latter part of June, and subsequently to his death it was learned that he had been the owner of certain certificates of deposit approximating the sum of ten thousand dollars. At the time when the assessment was taken the supervisor was not aware of the existence of said certificates and consequently did not assess the same. The supervisors has now requested your Commission to review the assessment roll of the township and to include this property. You have asked my opinion as to whether or not such action may be taken.

Section 152 of the general tax law, as amended, seems to be sufficiently broad in scope to apply to this case. In accordance with this section if it be determined by the Board of State Tax Commissioners, upon a proper hearing, that taxable property has not been placed upon the assessment roll, the omission may be remedied and the property duly entered with the true cash value thereof. It occurs to me that this action may be taken in the case stated.

Inasmuch as it is the purpose of this statute to permit the assessment roll to be corrected, and property included therein that should have been assessed by the supervisor, I am impressed that the entry should be made on the roll in substantially the same form as the supervisor would have entered the same had he been aware of the existence of the property omitted. At the time when the assessment roll was prepared the certificates of deposit were assessable to the owner. The action of the State Board relates back to the time provided by law for the assessment of property and the making of the roll. It seems to me, therefore, that events transpiring between such time, and the date of the hearing before the Board, must be disregarded and the action taken as of the previous date. Accordingly it is my opinion that in the particular case under discussion the assessment should be made in the name of the person owning the property at the time when, by statute, the supervisor was charged with the duty of making up the assessment roll.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

TAXATION. Under Act 142 of 1913, as amended, a bond or secured debt on which the specific tax is paid is exempt from taxes under the general law even though sold or transferred.

August 30, 1915.

Mr. Boyez Dansard, Monroe, Michigan:

Dear Sir—Your communication of the 23rd inst. with reference to the construction to be placed on Act 142 of the Public Acts of 1913, as amended at the last session of the Legislature by the so-called Watkins Act, has been received. The measure in question provides for a specific tax upon certain forms of secured debts, and for the exemption thereof from taxation under the general laws of the State. The question arises as to whether or not a bond thus exempted continues to be so exempt if it is transferred by the person who pays the specific tax, and is held by another party residing in a different municipality.

Section 2 of the Act, as amended, outlines the procedure to be observed, and requires that the county treasurer, upon the payment of the specific tax on any secured debt or municipal bond within the scope of the Act, shall endorse such fact on the instrument, or shall give a receipt. A description of the debt or bond is also required to be kept.

Section 4 declares that bonds upon which the specific tax has been paid "shall be exempt from further general taxes under the laws of this State." It occurs to me that these provisions, construed together, must be taken to imply that any bond or secured debt upon which the specific tax is paid shall thereafter be exempt under the general law without reference to whether or not the same is transferred and also without reference to the residence of the purchaser.

Respectfully yours,
GRANT FELLOWS.
Attorney General.

Ca-pi-O

COUNTY ROAD LAW. The county clerk is not entitled to extra compensation for work performed as clerk of the board of road commissioners under section 9 of Chapter 4 and may not receive same out of county road funds.

August 30, 1915.

Mr. W. B. Connine, Prosecuting Attorney, Traverse City, Mich.:

Dear Sir—I have before me your letter of the 19th instant in which you request my views as to the construction to be placed on section 9 of Chapter 4 of the general highway law. Said section declares that "the clerk of the county shall be the clerk of the board of county road commissioners and shall keep the records and accounts of the board and preserve its files in the manner directed by the board." It appears that your county has adopted the provisions of this chapter and that your county clerk is, pursuant to the clause above quoted, now acting as the clerk of the board of road commissioners. You state that a large amount of work is placed upon him as such clerk and that some question has arisen as to whether or not he is entitled to receive extra compensation.

It appears that the board of supervisors has refused to grant extra pay and that the board of road commissioners have also declined to do so.

Neither the section referred to nor any other provision of the county road law to which my attention is called seems to imply that the clerk shall be entitled to compensation for services performed for the board of county road commissioners, as clerk thereof. In the absence of such provision, I am constrained to the opinion that it was the legislative intent that the county clerk should perform the additional duties thus placed upon him without compensation other than that received by him as clerk of the county. It is a general proposition that one who accepts a public office does so subject to the implied condition that he will perform the duties pertaining to that office for the compensation fixed therefor and subject also to the condition that if additional duties are imposed, he will likewise perform them. Under the highway law, as it now stands, I am impressed that no part of the funds raised for county road purposes may be used to pay the county clerk for services rendered by him in accordance with section 9. Of course, any action on the part of the board of supervisors increasing the salary of the clerk because of those extra duties cannot be required. In other words, such action is discretionary with said board.

The provisions of section 9 suggest that the clerk shall do more than to keep the minutes of the various meetings of the board of county road commissioners. It will be noted that the word "clerk" is used rather than the word "secretary" and it is specifically declared that the clerk shall keep the records and accounts. This reference to the accounts of the board would seem to imply that the clerk shall keep a record of all disbursements made and shall likewise keep the payroll. While this may seem to work a hardship upon the clerk by entailing a considerable measure of work upon him without extra compensation therefor, it seems apparent that the board of county road commissioners may not, under the statute in its present form remedy the situation. Sections 19 and 20 of the chapter indicate the purposes for which the county road funds may be expended and the board is, of course, limited thereby. Without doubt, as before suggested, it was the intention of the legislature that the matter should be left to the discretion of the board of supervisors.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

RAILROAD LAW. Where a new highway is laid out across the right of way of a railroad company conditions in addition to those fixed by the statute may not be imposed upon the township by such county.

August 30, 1915.

Michigan Railroad Commission, Lansing, Michigan:
Attention of Mr. Cunningham.

Gentlemen—I have before me your letter of the 23rd inst. with which you submit correspondence with reference to the construction of a certain highway crossing a Kalva. It appears that the officials of the Pere Marquette Railroad Company across whose tracks the road passes refuse

to permit any work to be done on such crossing until the township shall have deposited in some bank a sum of money, the interest on which shall be sufficient to permit the maintenance of the crossing in proper condition. It appears that the procedure outlined by section 27 of Chapter 1 of Act 283 of the Public Acts of 1909 was followed by the township authorities and the highway has been laid out, with a proper record of the proceedings kept. Proper notice was served upon the railroad company but no claim for damages was made thereby. The question arises as to whether or not the officials of the railroad company have the right to insist that the Township shall make such deposit as is suggested before permitting the crossing to be constructed. Upon this phase of the matter you have asked that I give you my views.

The section of the highway law above cited was amended at the last session of the Legislature by Act 175 of the Public Acts of 1915. The changes that have been made, however, relate to matters of procedure and do not seem to change in any material respect the rights or duties of any railroad company whose tracks may be crossed by a new highway that is laid out by township or county officials. In accordance with the statute the railroad company is entitled to receive the actual value of the use of the land taken for the highway and notice of proceedings may be served in the same manner as is provided by the statute for the service of process on railroad companies. It appears that in the instance cited the local authorities complied fully with all requirements of the statute in force at the time said proceedings were taken, and that plans for the crossing were furnished by the railroad commission.

It is manifestly the intent of the legislative enactment, in its present form, as well as prior to the taking effect of the amendment of 1915, that when the procedure outlined has been observed the railroad company is charged with the duty of permitting the crossing to be constructed. In order that such work may be done without inconvenience to the carrier it is further provided that the company shall appoint a superintendent or trackman who shall supervise the work of constructing the crossing. Such superintendent is to be paid by the township, the rate of compensation being fixed by the Railroad Commission or by the Railroad Commission and the State Highway Commissioner, as the case may be. In the event that the railroad company neglects for any reason to furnish some one to supervise such work, then the Railroad Commission, in case of a grade crossing, may appoint some suitable person for such purpose. All material and labor used in the construction of the crossing must be furnished by the township, or by the county, if it be a county road.

The statute was clearly designed to make possible the crossing of railroads by new highways without extended delay or an involved proceeding. At the same time it was apparently the legislative intention to protect the rights of railroad companies and to insure that no undue burden should be placed thereon, and that property should not be taken without compensation. I am strongly impressed that when the procedure outlined by the statute is followed by local highway officials, it is not competent for a railroad company, or for officials charged with the management of any railroad system, to insist upon the observance, by the highway officials, of conditions not suggested by the statute, and apparently not contemplated thereby. Stated somewhat differently, the Legislature

has said that upon the taking of the steps prescribed it shall be the duty of the railroad company, and of the officers and employes thereof, to permit the crossing to be constructed. The provision with reference to the designating of a superintendent to supervise the work extends a privilege of which the company may avail itself or not as it sees fit. Failure to do so can not of course be permitted to stop the work. The public have the right to insist that, if the highway be a necessity, it shall be laid out pursuant to the provisions of the highway law, and that a right of way across property whether of a railroad corporation or of a private individual, may if necessary be compelled. To permit any corporation, or individual, to prescribe conditions in addition to those fixed by the statute, as prerequisite to the crossing of a right of way, or other land, by the highway, would in practical effect make it impossible to construct such highway. It is obvious that if parties may impose such conditions at will, then they may be made so unreasonable as to render it practically impossible to comply therewith. I believe that it is a sufficient answer to the contention of the railroad company in the case referred to, to say that the laws of the State specify the requirements to be observed in a case of this character, and they may not be added to at the pleasure of a private individual or of a corporation.

Under the terms of the statute there would seem to be no chance for any difference of opinion as to the rights; and also the duties of the railroad company, and of its officials and employes. The penalties that are prescribed in case the work is obstructed or otherwise interfered with would seem to leave no doubt upon this point, but they clearly suggest a way by which observance of the provisions of the law may be compelled. In the particular instance under consideration it is my opinion, therefore, assuming that the township authorities have duly complied with the procedure outlined by the statute, the railroad company may not insist that further conditions be observed nor may the construction of the crossing be prevented without a violation of the statute and the incurring of liability for the penalty thereby imposed.

Trusting that these suggestions will indicate my views upon the matter, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

LIQUOR LAW. Under section 39 of the local option law a witness may not wilfully refuse to give the information sought.

August 30, 1915.

David E. Hills, M. D., Fife Lake, Michigan:

Dear Sir—I note from your letter of recent date that your county has adopted the provisions of the local option law. Section 39 of said law makes provision for an inquisitorial proceeding before a justice of the peace, or other magistrate when any person is found intoxicated in a public place. In accordance with said section, such person may be subpoenaed, brought before the magistrate, and required to answer questions as to when, where, and of whom, the liquor was procured.

It is further declared that "if such person shall refuse to answer fully and fairly such questions, on oath, he shall be punished and dealt with in the same manner as for a contempt of court as in other cases." The question arises as to whether or not any person found intoxicated in a public place, and brought before a justice of the peace, may profess to have forgotten the source from which he obtained the liquor, and thus avoid giving any information, without rendering himself liable to the penalty suggested by the clause above quoted.

It occurs to me that each case of this character that may arise must be dealt with on its own merits and that no strict rule can be laid down to be observed in all cases. The legislature by requiring such person to answer "fully and fairly" evidently intended to guard against evasive and equivocal responses. It must necessarily rest with the magistrate before whom the inquiry is had to determine whether the witness answers the inquiries put to him in the manner contemplated by the statute. If it is obvious that evasive replies are made for the sole purpose of preventing the authorities from getting the information desired, then I am impressed that the witness may be dealt with as for a contempt. In most cases at least, the attendant facts and circumstances will doubtless enable the court to determine as to the fairness of the answers that are made to the questions prescribed by the statute. The power to punish a refractory witness in such proceeding was undoubtedly conferred in order that the purpose of the inquiry might not be defeated. I am strongly impressed that no wilful refusal to answer the inquiries in the prescribed manner should be permitted to go unpunished.

Trusting that these suggestions will indicate my views upon the matter, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

- **POOR LAWS.** A township is liable for the support of an indigent person who has a settlement therein where the distinction between county and township poor is not abolished.

August 30, 1915.

Mr. L. C. David, Saranac, Michigan:

Dear Sir—We are in receipt of your communication of recent date in which you request my views as to whether or not your township is liable for the maintenance of a certain indigent person to whom you refer. It appears that said person was a resident of your township until about three years ago, at which time he removed from Ionia county. You state that after such removal, your township contributed to his support for some time but for the past eighteen months he has been self-supporting. He has not, however, resided in any other township or county of the State a sufficient length of time to acquire a settlement therein within the meaning of the statutes relating to the support and maintenance of indigent persons. He is now in Ionia county and is at present in another township and requires public assistance. The question is presented as to the source from which the necessary support must

come. You state also that the distinction between county and township poor has not been abolished by your board of supervisors. Under your statement of facts, I am impressed that the person to whom you refer must be deemed to possess a settlement in your township. Not having acquired a settlement elsewhere, he cannot be deemed to have lost the same. Under the 4th subdivision of section 4536 of the Compiled Laws of 1897, your township is ultimately liable for expense incurred in caring for him. Said subdivision reads as follows:

"If such pauper shall be in a county where the respective townships are liable to support their poor, and has gained a settlement in some other township or city of the same county, than that in which he may then be, he shall be supported at the expense of the township or city where he may be and the supervisor shall give notice in writing to the supervisor of the township, or the director of the poor of the city, to which such pauper shall belong, or to one of them, requiring them to provide for the relief and support of such pauper."

I assume from your statements that the notice required to be given by the clause above quoted has been served upon you. If such is the case, then under the statement of facts presented, there would seem to be no chance for question as to the liability of your township.

With reference to the care of contagious diseases, I would direct your attention to section 4424 of the Compiled Laws of 1897 as last amended by Act 98 of the Public Acts of 1909. I assume that Ionia county is subject to the provisions of the general law rather than to any local enactment along this line. If such is the case, then in accordance with the section cited, any indigent person who is infected with a dangerous communicable disease shall be cared for by the local board of health and the claim for expenses incurred in connection therewith, must be audited and allowed by the board of supervisors. The determination of whether a particular disease is to be classed as a dangerous communicable one within the scope of the statutes rests primarily with the board of health and not with the board of supervisors. Upon this point, I would call your attention to the decision of the Supreme Court of this State in the case of *Thomas v. Ingham Supervisors*, 142 Mich. 319. Under the general law of the State, the liability of the county to care for cases of dangerous and communicable diseases is fixed and may not be avoided.

Trusting that these suggestions will give you the information requested, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

SCHOOL LAW. The voters in any primary school district may fix the compensation of district officers even though the number of children on the census list exceeds one hundred.

August 30, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Capitol:

Dear Sir—Section 9 of Chapter III of the General School Law confers upon the district Board of a primary school district authority to vote taxes for specified purposes, including compensation for the services of district officers. It is further provided in this section "that the tax for the services of district officers herein provided for in districts having less than fifty children shall not exceed twenty-five dollars, and in districts having between fifty and one hundred children the tax shall not exceed fifty dollars, the amounts to be allowed for such services to be determined by the electors at the annual meeting." The question arises as to whether or not the voters in a district in which there are more than one hundred children of school age, have the power of designating the compensation that shall be paid to the district officials.

I am impressed that the inquiry must be answered in the affirmative. It seems to me that the proviso above quoted can be construed in no other way than as conferring upon the voters of any primary school district the power to fix such compensation. It can scarcely be supposed that it was intended that the voters might exercise this privilege in districts having less than one hundred children but might not do so in districts having more than that number. It seems to me, therefore, that even though there are more than one hundred names on the school census list the voters may take such action as they see fit upon this matter. Of course in such a primary school district the limitation suggested by the proviso would not be operative, and consequently the amount so voted might exceed fifty dollars per annum. I assume that your question has reference solely to a primary school district and not to a graded or township district.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

GAME AND FISH LAW. Possession of a hunter's license does not authorize one to trespass on property of another. Theory of game legislation considered.

August 30, 1915.

Mount Pleasant Times, Mt. Pleasant, Michigan:
Attention Mr. Howard L. Holmes.

Gentlemen—I have before me your letter of the 27th instant in which you state that several questions have arisen in your community with reference to the construction and application of some provisions of the game laws enacted at the recent session of the legislature. You have asked that I give you my views with reference to the following inquiries:

- "1. Does the hunter's license under this new law authorize him to hunt on any property regardless to the owner's wishes?
2. If a property owner invite friends to hunt on his property by what right does the State require a license?"

In reply to your first inquiry, I would say that the possession of a license under the game law does not entitle a hunter to trespass upon the lands of another. Such license merely authorizes its possessor to take game in places where he is entitled to hunt. Stated somewhat differently, such a license confers the right to hunt game in accordance with the laws of the State but does not confer the right to interfere in any way with the property of another, or to enter thereon without permission.

It is the underlying theory of all legislation enacted for the preservation of game and fish, or in any way regulating the taking thereof, that the title thereto is in the people of the State; in other words the people of the State are deemed to be the owners of all game and fish within the limits of the State. Accordingly such game as may be found on the land of any individual cannot be regarded as the property of the owner of such land, or as subject to be disposed of as such owner sees fit. In accordance with the theory above suggested, the people of the State have the right to say that such game shall not be taken at all, or that it may be taken subject to prescribed conditions and regulations. The courts of this State, as well as the courts of every other State in the Union, have repeatedly recognized and upheld this theory. In view of the decisions along this line, it occurs to me that the constitutionality of such legislation is scarcely open to attack. These suggestions, I believe, answer your second inquiry.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

ADVERTISING. Act No. 62 of the P. A. 1911 does not prohibit the advertising of remedies unless the same is of an immoral nature.

September 1, 1915..

Mr. Thomas J. Green, Sault Ste. Marie, Michigan:

In Re Home Treatment Remedy Company.

Dear Sir—We are in receipt of yours of the 31st ult, enclosing proposed advertising matter of the Home Treatment Remedy Company of your city. You state that Dr. Harison, Secretary of the State Board of Registration of Medicine, has raised the question as to the propriety of this advertising, claiming that it violates the provisions of Act 62 of the Public Acts of 1911.

We have gone through the matter submitted very carefully and are unable to find where the same violates the provisions of said Act. It is apparent from an examination of the provisions of the Act in question that the same is intended to prevent immoral advertising. Section 1 of the Act provides as follows:

"Any person who shall advertise in his own name or the name of another person, firm or pretended firm, association, corporation, or pretended corporation, in any newspaper, pamphlet, circular, periodical or other written or printed paper, or the owner, publisher or manager of any newspaper or periodical who shall permit to be published or inserted in any newspaper or periodical owned or controlled by him, an advertisement of the treating or curing of venereal diseases, the restoration of 'Lost Manhood' or 'Lost vitality or vigor,' or shall advertise in any manner that he is a specialist in diseases of the sexual organs, or diseases caused by sexual vice, self-abuse, or in any diseases of like cause, or shall advertise in any manner any medicine, drug, compound, appliance or any means whatever whereby sexual diseases of men or women may be cured or relieved, or miscarriage or abortion produced, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or both in the discretion of the court."

The advertising submitted does not in terms deal with diseases of the character mentioned in the Act and while it may be close to the border line with reference to the same we do not believe the purpose of the Act is to prohibit the advertising of remedies to be used in the treatment of the class generally set forth in such advertising.

As per your request, we are returning herewith the advertising matter submitted.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

CORPORATIONS. Articles of incorporation of the Cadillac Auto Truck Co. should not be refused because of the existence in this State of the Cadillac Motor Car Co.

September 1, 1915.

Hon. Coleman C. Vaughan, Secretary of State, Lansing, Michigan:

Dear Sir—I have before me your communication of this date in which it is stated that articles of incorporation of the "Cadillac Auto Truck Company" have been presented to you in accordance with Act 232 of the Public Acts of 1903 as amended. There is a corporation organized under the laws of this State and doing business herein, known as the "Cadillac Motor Car Company." In view of the application referred to and of the existence of the prior corporation, the question has arisen as to whether or not the name sought to be adopted by the proposed new corporation is objectionable under the provisions of the statute in question. Upon this proposition you have requested my views and have asked to be advised as to the acceptance of the articles tendered to you. The specific provision of the statute that is involved in a determination of this question is found in the first subdivision of section 2 thereof. It is therein declared:

"No name shall be assumed already in use by any other existing corporation of this State, or corporation lawfully carrying on business in this State, or so nearly similar as to lead to uncertainty or confusion."

Inasmuch as the names that are involved in this case are not identical, our inquiry must necessarily be directed to a consideration of the last clause of this provision. Any claim of such similarity as is sought to be prevented by the statute must necessarily rest upon the use of the word "Cadillac." It must be borne in mind, I believe, that in determining whether these proposed articles should be accepted or not, the rights of the prior existing corporation are not primarily involved. The intent of the statute is undoubtedly to protect the public, and to prevent the use of similar names when confusion on the part of the public seems inevitable or highly probable. The precise point at issue here, and by the determination of which the acceptance of the articles of incorporation is to be governed, is therefore: Is the name "Cadillac Auto Truck Company" so nearly similar to the name of the existing corporation, the "Cadillac Motor Car Company," that it may be said without serious doubt that uncertainty or confusion on the part of the public will ensue upon the organization of the new corporation and the carrying on of business thereby.

It seems to be clearly established by decisions of the Supreme Court of this State and of the courts of last resort of other states that a corporation may not acquire the absolute right to the use of a geographic name. Cases involving this proposition invariably deal with the right of the prior existing corporation to enjoin the use of a particular name by a subsequently formed corporation or association. However, the principle that is involved here, namely the protection of the interests of the public, is likewise involved in proceedings instituted primarily to determine the rights of the corporations concerned. The proposition of law above suggested has been repeatedly recognized in these cases and it has been declared that the use of the geographical name will not be enjoined in the absence of fraud, estoppel, or facts showing that the public have been deceived. It is also established that, as declared by Justice Ostrander, speaking for the Supreme Court of this State in *Michigan Savings Bank v. Dime Savings Bank*, 162 Mich 297,

"Mere conjecture that some confusion may result is not ground for granting equitable relief."

In the instant case, it does not appear that any fraud can be claimed, or that the question of estoppel is in any way involved. Neither do I think that it can be said that the carrying on of business by the proposed new corporation under the name sought to be adopted thereby must necessarily lead to public uncertainty or confusion. That such result may follow is rather a matter of conjecture. As declared by Justice Ostrander in the case above cited, equitable relief cannot properly be predicated upon such basis. For obvious and analogous reasons, it does not occur to me that such a possibility can be said to warrant a refusal to accept the articles of incorporation that have been tendered to you.

As stated, this question has come before the courts in controversies arising between corporations, rather than in proceedings brought to compel the acceptance of proposed articles of incorporation. The general rule that may be formulated from these cases is laid down in 10 Cyc. 153 as follows:

"By analogy to a principle in the law of trademarks, an injunction will not be granted at the suit of one corporation to restrain another corporation from the use of a corporation name descriptive of a place or of an employment, there being no fraud or intent to deceive."

Pursuant to this principle, it was held by the Supreme Court of Illinois in *Elgin Butter Co. v. Elgin Creamery Company*, 40 N. E. 616 that the use of the geographical name might not be enjoined.

It seems to me that the general principles suggested in the case of *Michigan Savings Bank v. Dime Savings Bank*, above cited, are conclusive upon the question here involved. It is to be noted that in this case the two corporations concerned were both carrying on business in the City of Detroit, and were presumably engaged in precisely the same business. In the situation suggested by your communication, the new corporation, if its organization is duly perfected, will be located in the City of Cadillac while the Cadillac Motor Car Company has its principal place of business in this State in the City of Detroit. This fact may, I believe, be taken into account in considering the probability as to any considerable portion of the public being deceived by any similarity of names. It does not occur to me that the decisions in *Land Knit Goods Company v. Lamb Glove & Mitten Company*, 120 Mich. 159, and *Penberthy Injector Company v. Lee*, 120 Mich. 174, are in any way inconsistent with the conclusions suggested. In both of these cases, it would appear that actual experience had shown that the public had been deceived. The inference would seem to be justified that the question of estoppel was also involved. In neither case, therefore, were the facts involved parallel to those in the situation concerning which you have requested my views. The same statement may be made with reference to *Peoples Outfitting Company v. Peoples Outlet Company*, 170 Mich. 398, in which case defendant's demurrer to the bill of complaint praying for injunctive relief was overruled.

In accordance with the foregoing suggestions, I am inclined to the opinion that the proposed articles of incorporation of the Cadillac Auto Truck Company should not be rejected by you for the reason suggested. The only portion of the name concerning which any question might arise is the geographical term. In the absence of fraud, estoppel or facts tending to indicate conclusively that the public will be deceived, the use of such name may not be prevented. I am not prepared to say that the assumption that the public will be deceived, or that uncertainty and confusion to the public must be the necessary result if this new corporation is permitted to effect its organization, is warranted by the facts before us. It would seem rather that the contrary conclusion is the more probable and that in consequence the inhibitory conclusion of Act 232 of 1903, quoted at the outset, does not apply.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

COUNTY JAILS. The State Board of Correction and Charities can not be required to pass on plans therefor unless the construction has been duly authorized.

September 2, 1915.

Hon. M. T. Murray, Secretary State Board of Corrections and Charities,
Capitol:

Dear Sir—I have before me your letter of the 31st ult., in which you request my views as to whether or not it is the duty of the State Board of Corrections and Charities to give consideration to plans for the construction of a county jail when such construction has not been duly authorized. I understand that your inquiry has reference to a situation that has arisen in the county of Newaygo. Under date of July 23, 1915, this department gave you an opinion with reference to the regularity of the proceedings taken in said county having for their apparent purpose the ultimate construction of a jail. You were advised in that opinion that, in view of the amount sought to be raised, the matter must be submitted to a vote of the electors in compliance with the laws of the State. I infer from your present inquiry that, relying upon the procedure referred to, plans for the jail have been prepared and that Your Board has been requested to approve the same.

The duty of passing on plans of this kind is imposed upon your Board by section 2254 of the Compiled Laws of 1897. Said section provides, in substance, that before any contract shall have been entered into or any plans formally accepted for any jail "which has been duly authorized to be built" such plans must be examined by the State Board of Corrections and Charities. A report of this examination and of the opinion of the Board is required to be filed with the county clerk of the county in which it is proposed to construct the building. It is specifically declared that no money shall be paid out on account of such construction until this opinion has been duly filed, and any contract entered into without such step being observed is rendered invalid by the omission. It will be noted that specific reference is made in this section to jails, the construction of which have been "duly authorized." It occurs to me that this clause must necessarily be construed to mean that proposed plans shall be submitted to your Board, after the construction of the building has been directed by the proper authorities. Conversely, if the proceedings taken are irregular and invalid the Board may not be required to examine any plans presented as a part of such procedure. Clearly, the statute contemplates that proposed plans for such building shall be passed upon in the prescribed manner when, and only when, the construction of the building has been duly provided for in accordance with the laws of the State. Inasmuch as the electors of Newaygo county have never passed on the question of raising the necessary fund, and the jail can in consequence scarcely be considered to be "duly authorized" it is my opinion that the plans in question were not properly submitted. It follows that action thereon on the part of the Board can not be regarded as mandatory. Under any aspect of the case it can scarcely be claimed that the resolution of the Board of Supervisors of Newaygo county, which resolution is discussed in our prior opinion

to you with reference to this matter constitutes the required authorization. It will be recalled that such resolution provided only for the construction of a basement for a jail, and not for the structure itself.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

FOREIGN CORPORATION. That makes loans upon Michigan property and takes as security mortgages upon such property without selling or offering for sale such mortgages in this State and having no agent in this State for the transaction of such business is not within the terms of Act 206, P. A. 1901, as amended.

September 4, 1915.

Messrs. Wiley & Green, Attorneys, Sault Ste. Marie, Michigan:

Gentlemen—We are in receipt of yours of the 1st instant wherein you state:

“We are obtaining money from farm loans from a firm in Chicago. We are not their agents except as we have arrangements made with them to loan our clients money provided the security and the title is satisfactory. They have no office in this State, and do no business in it except that they are the mortgagees in the mortgages negotiated by us here. They have asked us to advise them whether or not it is necessary for them to be authorized to do business in this State under Act 206 of 1901, as amended, being finally amended by Act 310 of 1907, and being Section 9647 of Howell's Michigan Statutes, Second Edition. It would appear from the case of the New York Mortgage Company vs. Secretary of State, 150 Mich. 197, that this kind of a corporation was not within the contemplation or purview of this act. The company in question deals in farm mortgages only, selling them to their clients, which include private investors and several large insurance companies. They sell none of the mortgages in this State, nor any bonds or debentures issued upon them. Will you kindly advise us if under these circumstances it is necessary for our clients to secure permission to do business in this State? It would seem to us that they are not transacting business in this State within the meaning of this Act, and in fact that such a corporation is not included within the meaning of the above act, and certainly they are not doing a banking business in the State so as to come within the banking act.”

In reply you are advised that in our opinion the Chicago firm mentioned is not doing such business in the State of Michigan as would require it to procure authorization as provided by Act 206 of the Public Acts of 1901 as amended. The rule of law as to what constitutes “doing business” under the terms of this act is well established in the case of *Hastings Industrial Co. vs. Moran*, 143 Mich. 679. From your communication, it would appear that you are in no way acting as agent for the

said concern in the State of Michigan. It would further appear that contract is entered into between the borrower and the concern making the loan in the State of Illinois. The mere fact that the situs of the property upon which security is given is the State of Michigan would not render the same a Michigan contract. Neither would it, in our judgment, constitute the doing of business in this State within the meaning of the terms of the act.

A different situation, of course, would be presented if this concern sold or offered for sale the mortgages in question within this State. In such case it would be necessary for it to comply with the terms of the act in question.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Cr-v-O

TAXATION. The fact that a dam is used in connection with other property may be taken into account in determining its value for taxation purposes even though such property is in an adjoining county.

September 4, 1915.

Board of State Tax Commissioners, Lansing, Michigan:

Gentlemen—I am advised that the Alpena Power Company is the owner of a certain dam situated in the county of Alcona which is used for the purpose of raising the waters of Hubbard Lake and thus evolving power which is employed by the Power company for certain purposes in Alpena county. It appears that some question has arisen with reference to the valuation of this dam for purposes of taxation. It is the claim of the owner that the structure has no intrinsic value; while the township officials contend that in making the assessment the uses to which a dam is put in connection with other property of the power company should be taken into consideration. You have asked that I give you my views with reference to the proposition of law that is thus presented. In accordance with the Constitution of the State (Section 7 of Article X), property liable to taxation must be assessed at its "cash value." The meaning of this expression is defined in section 3850 of the Compiled Laws of 1897 which provides as follows:

"The words 'cash value,' whenever used in this Act shall be held to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale."

The property involved in the situation under consideration is, in accordance with the constitutional and statutory provisions, to be assessed at the cash value, which is to be ascertained in the manner suggested by section 3850. It occurs to me that in fixing the valuation of this property, as well as of any other parcel of real estate, the assessing officer is entitled to take into account all of the various factors that have a legitimate bearing on the value of the property. In the instant

case if the dam were to be sold there can be no question but that the purpose for which it is used would be taken into account by both vendor and vendee. It is doubtless true in many cases that a particular parcel of land possesses an added value because it is used for specific purposes, and in connection with other property. In such cases I am impressed that these circumstances must be taken into account in placing a proper valuation thereon in order that the mandate of the Constitution may be complied with. Neither does it occur to me that the fact that the property in connection with which the particular parcel is used, is located in a different taxing district can be permitted to alter the situation. In other words, if the value of the property is affected by such use the assessing officer may, and should, take such fact into consideration and assess the property at what he considers to be its "cash value."

The Supreme Court of this State has in several instances had before it cases involving the application of the provisions of the Constitution, and of the General Tax Law, above referred to: The mandatory character thereof has been repeatedly recognized, and the general principles by which assessing officers are to be governed have been suggested. Thus, in *Auditor General vs. Ayer*, 122 Mich. 136, the Court condemned an agreement which, if carried out, would have resulted in the assessment of certain property at less than its real value. It was there said: "Each parcel must be assessed at its true cash value, so that there may be protection to each taxpayer, and in no other way could the taxpayer be protected." I believe that the proposition is not open to question that under the laws of this State all property must be valued for assessment purposes in the manner indicated, and this without reference to the particular factors contributing to such value. I call your attention in this connection to the recent decision in the case of *Newport Mining Company vs. City of Ironwood*, 22 D. L. N. 384, in which it was suggested that assessing officers, in determining the valuation of property, should be guided by the same considerations that would be taken into account by a purchaser of the particular property involved. Justice Ostrander, speaking for the court, used the following significant language: "There is no reasonable ground for contending that the State may not use the methods of business to ascertain such values * * * The State must of necessity treat the peculiar subject of taxation as the subject requires; not to change or modify a cardinal rule of taxation, but to apply it."

The precise question that you have suggested came before the Supreme Court of New Hampshire, in the case of *Manufacturing Company vs. Gilford*, 64 N. H. 337. It appears that in this case plaintiff owned property of the value of \$275,000 in the town of Gilford, said property including dams, gates and certain flowage and reservoir rights. It appears that power generated by means of this equipment was used in Massachusetts in connection with certain other property of the plaintiff. In making the assessment the officials of the municipality took into consideration the fact that the New Hampshire property had a greater value because it might be so used for the benefit of factories in the adjoining State. It was strongly urged on behalf of the plaintiff that the assessing officers had exceeded their authority in arriving

at the valuation of the property in this manner. In rejecting this contention the court said, in part:

"In the appraisal of a water-power, as of other property, all of the facts and circumstances affecting its value are competent evidence. The assessors may consider the original cost of the entire property, the quantity of land flowed and its value for other purposes, the magnitude of the power, its location and the place where it is or may be applied, together with the limitations, if any, either of the manner in which or of the purposes for which it may be employed, the income derived from it by way of rents or from its use by the owners, the expense of maintaining and managing it, the cost of equal power derived from other sources (that is, its comparative economy), the effect which the appropriation of the land for the purpose and the use of the power have to increase or to diminish the value of the owner's other lands, and their like effect upon the property of others,—in short, anything which might justly affect the judgment of a person desiring to purchase in determining what price he would offer.
* * *

The entire value of a parcel of land may consist in its capacity to render other lands valuable, as if in a desert a single acre were found whereon artesian wells could be sunk producing sufficient water to irrigate and make fertile the whole desert. The acre would be of great value because by means of it lands otherwise worthless could be made valuable. It could not be so appraised without considering its effect upon them; * * * The referees committed no error of law in considering that the value of the property is increased because it can be controlled and profitably used by the plaintiffs in Gilford for the benefit of their mills situated elsewhere, and because by its control and use in Gilford the value of their mills and other estate situated elsewhere is increased. How much its value is augmented by these considerations is a question of fact, in the determination of which by the referees no error appears."

Some stress was also placed upon the fact that the other property benefited by the maintenance by the dams, gates, etc., in New Hampshire, was located outside the State. Commenting upon this feature of the case it was said by the Court:

"It is immaterial where the property benefited by the use of the reservoir rights is situated. The rights are not less a parcel of the Gilford lands, in case their exercise is beneficial to mills in Massachusetts, than they would be if they were used and controlled for the sole benefit of mills in Gilford. It may be that the value of the mills in Massachusetts is increased by reason of the existence of the reservoir rights and that of the rights by reason of the existence of the mills. If so, and if each property is appraised for taxation at its full value, it does not follow that any portion of either property is included in the valuation of the other. The assumption that the plaintiffs' reservoir rights are taxed with the Lowell and Lawrence mills to the extent that

the value of the mills is increased by reason of the rights, has no foundation. If by excavation on elevated land near a city pure spring-water were found sufficient to supply, by means of an aqueduct, all the inhabitants, the effect might be not only to increase largely the value of the tract upon which the water is obtained, but also the value to some extent of every house and lot in the city. A taxation of the city lots and buildings at their full increased value, as the law requires them to be taxed (C. L. c. 56, s. 1), would not be a taxation of any part of the aqueduct company's rights or land; nor would a taxation of the latter at their full value be a taxation of the city property, although but for the city's proximity they might be substantially worthless.

The value of the plaintiffs' property is not affected by the fact that the benefited mills in Lowell and Lawrence are owned, not by the plaintiffs' corporation, but by the stockholders, who in place of money dividends take as their portion of the income the benefits accruing to their respective mills. The value of all the aqueduct company's property would be neither more nor less the householders and lot-owners in the city were its stockholders, and instead of dividends in money received water each in proportion to the amount of his stock.

If the plaintiffs should sell and convey all their property in Gilford, upon condition that the purchaser regulate the flow of water as it is now regulated, the right to the stipulated flow of water would be an interest in land situated in Gilford, and taxable. If the owner sells his dam and mill-privilege, reserving a right to draw a specified quantity of water, the reserved right is real estate, and taxable. If the owner of a mill and a reservoir water-right in Gilford, worth \$21,000, sells all his real estate in Gilford for \$10,000, its full value, reserving all water-rights except power sufficient for the use of the Gilford mill, his reserved rights are worth \$11,000, and are taxable at that sum in Gilford. An owner of a valuable water-power cannot escape taxation by putting in another the title to the soil, which is generally of little comparative value in the absence of the power, and of no value for other purposes so long as it is used to create the power."

In Cooley on Taxation, page 757, the principle of law adhered to in the case above cited and quoted from, is laid down as follows:

"In appraising a water-power for taxation, the assessor may consider all facts affecting the value—the original cost of the entire property, the quantity of land flowed, the magnitude of the power, the places where it may be used, the limitations upon its use, the income derived by way of rents the expense of maintaining it, or anything which might justly affect the judgment of a person desiring to purchase it."

The decision of the Supreme Court of Massachusetts, in *Blackstone Manufacturing Co. vs. Town of Blackstone*, 200 Mass. 82, is also squarely in point upon this proposition. In this case the property involved,

consisting of a water-fall and a dam, canal and other structures constructed to make available the power so furnished, were located in Massachusetts, while the power was in fact employed in Rhode Island. The question arose as to the manner of ascertaining the value of the Massachusetts property for purposes of taxation. It was held that the dam and other property was to be considered in connection with the use to which the power was put, notwithstanding that the mills operated were outside the State. In commenting on the nature of the property involved the court said:

"In the present case no easement has been created, but the land is held, with its appurtenances, and all its natural qualities, by a single owner. It should be taxed to the petitioner, with all its elements of value. Among these are the right to use the flow of the water in connection with the fall of the stream to produce power, and to sell it for that purpose, either to be used in Massachusetts, or to be carried into Rhode Island and used with an additional fall there. The use in Rhode Island is not to be taxed separately, as water-power existing and applied there, but all the elements and qualities of the real estate which unite to produce the water-power in Rhode Island, and which combine to give it value there, are to be considered. In determining the value of these features of the real estate in Massachusetts, the uses to which power could be put in Blackstone are to be considered, and the uses to which it is put in connection with the additional fall and the structures in Rhode Island are to be regarded. *Lowell vs. Middlesex County*, 152 Mass. 372, 9 L. R. A. 356, 25 N. E. 469.

If the value of all such elements—those in Rhode Island, as well as those in Massachusetts—which combine to produce the entire water-power at the wheels is ascertained, the inquiry will then be, what part of this value is imputable to the real estate in Massachusetts? The answer to such an inquiry would be in part an estimate, but it would not be unlike estimates that are frequently made in determining the rights of parties. Such estimates have sometimes involved an apportionment, for taxation between different states, of the values of property extending into two or more states and used as a single system under one ownership." (Citing authorities.)

To the same effect are the following decisions: *Water Power Co. vs. County of Berkshire*, 112 Mass. 206; *Manufacturing Company vs. Concord*, 66 N. H. 562; *Reservoir Company vs. Union*, 73 Conn. 294.

The case of *Manufacturing Company vs. Concord*, above cited, is of particular interest in connection with the situation now under consideration in that it involved the taxation of a dam situated in a river forming the boundary between two taxing districts. The power developed was used entirely for the operation of a mill in one of such towns. It was held, however, that notwithstanding the character of the use, the value of the structure for taxation purposes should be apportioned between the districts concerned.

By analogy I am impressed that the same view must obtain in the case suggested by you, and that the purpose for which the dam in Alcona county is used, and its connection with other property of the Alpena Power Company, must be taken into consideration in valuing the same for assessment purposes. It seems apparent that any contrary view must necessarily lead to the assessment of such property at less than its full "cash value." It is difficult to see how the requirement of the Constitution, and of the statute, can be complied with without giving proper weight to the use to which the property is actually put. As suggested, the fact that the power generated is actually employed in an adjoining county does not alter the situation. The actual value of the dam is not affected by the location, of the factories or other property in connection with which it is used.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

MILITARY LAW. One who refuses to attend National encampment of the State National Guard should be tried by courtmartial rather than in a State court.

September 4, 1915.

Mr. Frank F. Ford, Prosecuting Attorney, Kalamazoo, Mich.:

Dear Sir—It appears from your letter of the 2nd instant that some question has arisen in your county as to whether or not a member of the Michigan National Guard who neglects or refuses to attend the National Encampment when ordered so to do may be prosecuted under any statute of the State. You have requested that I give you my views upon the matter.

The organization of the State militia and of the National Guard is provided for by Act 84 of the Public Acts of 1909 as amended. I would call your attention also to Act 311 of the Public Acts of 1913, which has reference to the maintenance of discipline in the Guard. An examination of these measures seems to warrant the conclusion that an offense of this kind is to be dealt with, in the first instance, by a courtmartial and the penalty to be inflicted determined thereby. When a forfeiture has been thus decreed, recovery thereof may be enforced in certain cases in a court of competent jurisdiction. Section 54 of the statute of 1909 doubtless covers the particular case to which you have reference and clearly indicates that trial by courtmartial shall be had. The same provisions in substance are found in section 5 of the Act of 1913 above cited. Section 57 of the general act refers to the making of complaints to the prosecuting attorney of the county. It occurs to me, however, that this provision has reference to offenses defined by the act for which it is specifically provided that prosecution may be had in a State court. Sections 2 and 4 of said act refer specifically to offenses of this kind and make it the duty of the prosecutor to proceed in the manner indicated. It seems apparent, however, from a consideration of all of the various provisions

of the statute relating to this subject that the particular offense to which you refer is to be dealt with, as suggested, by a courtmartial.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

GAME LAW. Under the provisions of Act 108 of 1913, as amended by Act 211 of 1915, a minor under the age of seventeen can not lawfully hunt for, etc., wild game or birds except under the proviso exempting residents of this State and their minor children when hunting upon their own enclosed lands upon which they are regularly domiciled.

September 8, 1915.

Mr. Henry S. Sweeny, Prosecuting Attorney, Petoskey, Michigan:

Dear Sir—We are in receipt of yours of the 1st inst. wherein you ask: "Is Act No. 108 of the Public Acts of Michigan for the year 1913, so construed so as to prevent any person under seventeen years of age to hunt for, kill, etc., any of the wild animals or wild birds protected by the laws of this State?"

In reply, this Act has been amended by Act 211 of the Public Acts of 1915. Act 108 of 1913 does prohibit the issuance of a license to any person under the age of seventeen years. Section 1 of the same Act provides that:

"It shall be unlawful for any person to hunt for, kill, pursue or take in any manner any of the wild animals or wild birds protected by the laws of this State, without first obtaining a license to do so under the provisions of this Act. For the purpose of this Act wild animals and wild birds shall be construed to mean all of the animals or birds designated as game animals and game birds by the laws of this State, except deer and fur-bearing animals, which shall not come under the provisions of this Act: Provided, That for the purpose of this act fur-bearing animals shall be all animals which are designated as fur-bearing animals by the laws of this State: Provided further, That the provisions of this section shall not apply to residents of this State and their minor children or employes when hunting upon their own lands, nor to any person while hunting within the county in which he actually resides."

From an examination of section 2 it is apparent that no license may be issued to any person under the age of seventeen years, and it is also apparent from an examination of section 1 that it is unlawful for any person to hunt for, kill, pursue or take in any manner any of the wild animals or wild birds protected by the laws of this State, without first obtaining a license so to do, except in the case of residents of this State and their minor children or employes when hunting upon their own lands, or any person hunting within the county which he actually resides. The latter exception has been removed in the 1915 amendment. Hence, in view of the fact that a license may not issue to a person under the age of seventeen years, it is now impossible for a person under that age

to lawfully hunt, etc., said animals or birds except in the case of residents hunting upon their own enclosed lands upon which they are regularly domiciled.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

HIGHWAY LAW. The assessment of property and the disposition of funds, under Act 59 of 1915 considered.

September 10, 1915.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Michigan:

Dear Sir—Your letter of the 9th inst. requesting my views upon certain questions arising in connection with the construction and application of Act number 59 of the Public Acts of 1915, is before me. Your inquiries are as follows:

“1st. Can State, county, school or church property be assessed for benefits under this act?

2nd. Can a good roads district, as organized under Chapter III, Act 283, Public Acts of 1909, as amended, be assessed as a whole for benefits under this Act?

3rd. Does the State Highway Commissioner keep funds on deposit and draw orders on the State, county or township treasurer?

4th. What use can be made of donations? Are they credited to the funds of the entire assessment district or to any part thereof which may be designated by the donor?”

The provision of the Act with reference to the levying and collection of assessments made thereunder seem to be inconsistent with the idea that it was the intention of the Legislature that property used by a municipality or political subdivision of the State, and exempt from taxation under the general law for that reason, is to be deemed liable to an assessment on the basis of benefits received. It is declared that special taxes “shall be collected at the same time as State, county and township taxes are collected, and by the same officers, who shall have all the powers to collect the same that they may have to collect State, county and township taxes. All provisions of law with respect to the collection of said County, State and Township taxes shall apply to these special taxes.” Under the procedure outlined by the General Tax Law land upon which taxes are not paid may be sold. It is scarcely to be presumed, I believe, that in enacting the measure under consideration the legislature intended that such course might be followed with reference to lands belonging to the State or to any county. Had it been the intention to permit the assessment of property of this kind undoubtedly a different procedure would have been provided for the enforcement of collection, and such terms would have been used as would render manifest the purpose to make property used for governmental purposes and owned by governmental agencies, subject to the imposition of the special assessment contemplated by the Act. Similar considerations must, in my opinion, obtain as to land owned by a school district and used for school

purposes. While, in a strict sense, such property can scarcely be said to be used in connection with the performance of governmental functions, yet, its use is similar in character. Constitutional provisions upon the subject seem to imply that property owned by a school district and used in connection with the performance of the functions of the public school system of the State is to be regarded as devoted wholly to that purpose. Such property is accordingly exempted, by legislative enactment, from taxation under the general law. It occurs to me that obvious reasons of public policy necessitate that it must likewise be deemed to be exempt from the payment of special assessments. If deemed subject to the imposition of such a charge as is contemplated by Act 59 of 1915, it must likewise be considered as subject to the procedure provided by the general tax law in case of the non-payment of an assessment. If this view be taken, then a condition might arise that would lead to the seizing of the property of the school district and the sale thereof for non-payment of the special tax. Such a result can I believe be scarcely presumed to have been intended by the legislature. In support of the proposition that school property should be exempted from such charges, I call your attention to the following cases: *People vs. School Trustees*, 118 Ill. 52; *Erickson vs. Cass County*, 11 N. D. 494; *Edgerton vs. School District*, 126 Ind. 261.

With reference to church property, however, I am impressed that different considerations must prevail. Such property is exempted from taxation under the general law on the theory that such enterprises are to be encouraged by being relieved from taxes imposed for the support of government. Special assessments of the character contemplated by the measure under consideration are levied upon the basis of benefits actually received by the property upon which the assessment is made. Theoretically at least since the property is deemed to be benefited to the amount of the special tax, no burden is in fact placed upon such property. Not being used for governmental purposes no feasible objection may be raised to the procedure provided for the enforcement of collection of the special tax against such property. It is a general principle that an exemption from taxation, especially in the case of privately owned property, is to be strictly construed. Commenting upon this rule it was said by Judge Cooley in his work on Taxation, page 362: "The most striking illustration of the rule of strict construction of exemptions is seen in the case of special assessments for labor improvement, such as the paving and repair of streets, etc. It is almost universally held that a general exemption from taxation will not extend to such assessments." The Supreme Court of this State, in the case of *Lake Shore & Michigan Southern Railroad Company vs. Grand Rapids*, 102 Mich. 374, applied the doctrine suggested by Judge Cooley, and held that the property of the complainant railroad company, in the city of Grand Rapids, was subject to special assessment for benefits received thereby from the paving of a street, notwithstanding that all property owned by the railroad company was exempt from taxation under the general laws of the State.

I am impressed in view of the generally accepted rule upon this subject, and the application thereof by our Supreme Court in the case cited, that church property is subject to assessment under the statute in question for benefits received thereby. The same conclusion must likewise be reached with reference to other property not used for school or gov-

ernmental purposes but which is exempted from taxation under the general law. In other words, the exemption under the general law can not be so extended as to grant an exemption from the payment of a special assessment for a local improvement.

In reply to your second inquiry I would suggest that the Act as drawn seems to contemplate that a tax at large may be spread upon the county and townships affected, or upon the townships only where the county road system is not in force. There is no provision authorizing the imposition of a charge, for benefits received, against a good roads district organized under Chapter III of the General Highway Law. In the absence of such provision I am impressed that such action may not be taken. The provisions of the statute especially insofar as they relate to the assessment and collection of taxes must be strictly construed, and assessments not clearly authorized may not be imposed.

It seems to be the intent of the Act that all funds belonging to any special road district created thereunder shall be kept on deposit with the county treasurer, to be paid out in the prescribed manner. No different procedure is suggested in cases in which jurisdiction is conferred upon the State Highway Commissioner. Apparently it was designed that the same course should be taken in this respect as in cases where the county road commissioners are empowered to take charge of the work. This suggestion will, I believe, cover your third inquiry.

Section 32 of the Act provides for the receiving of donations, and directs that the same shall be paid to the county treasurer "to be used only upon improving the particular piece of road specified to be improved by the donor and shall be placed to the credit of the road district." In accordance with this clause money that is donated is to be regarded as belonging to the district, subject to the restriction that if the donor imposes the condition that it shall be used for improving a designated piece of road, it may be used for no other purpose. If, for any reason, it is impossible to use money donated for the exact purpose specified by the donor, it must be returned to him. Such a donation constitutes a trust fund that must be applied pursuant to conditions imposed. If used, it of course inures to the benefit of the municipalities and individual land owner liable to the payment of the special tax.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

RAILROAD COMMISSION. Has no jurisdiction with respect to the question of rentals for land leased from railroad companies for elevator and warehouse purposes unless a question of discrimination is raised. In which case the Commission would have jurisdiction.

September 10, 1915,

Michigan Railroad Commission, Lansing, Michigan:
Attention Mr. Cunningham.

Gentlemen—We are in receipt of yours of the 4th inst. requesting advice as to whether your Commission has jurisdiction respecting the

question of rentals for land leased from railroad companies for elevator and warehouse purposes.

In reply we are of the opinion that your Commission is without jurisdiction in such matters unless discrimination in such practice is alleged as between shippers. In such case, it would in all probability be within the jurisdiction of the Commission to deal with such matters under Section 41 of Act 198 of the Public Acts of 1873, the same being Compiler's section 188 of the laws relating to railroads, revision of 1913.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

STATUTES. Certain measures relating to practice and procedure passed at the session of 1915, considered in relation to the Judicature Act.

September 10, 1915.

Hon. Coleman C. Vaughan, Secretary of State, Capitol.

Dear Sir—I note from your communication of recent date that you purpose publishing a volume containing the so-called Judicature Act of 1915, together with other measures passed at that session affecting practice and procedure. You have asked my views as to whether or not certain of these measures have been superseded, either wholly or in part by the Judicature Act. The measures specifically referred to are Acts 80, 125, 159, 200, 213, 217, 225, 242, 256, 272, 280, 283 and 284. The last four Acts were approved on the 18th of May, on which date the Judicature Act was also approved.

Act number 80, approved on the 22nd of April, was given immediate effect. The other enactments in question became operative on the 24th of August. Inasmuch as the Judicature Act does not, in accordance with the provisions thereof, go into effect until the first of January, 1916, it follows that all of these Acts, assuming their constitutionality, will be in force until that date. Our inquiry must, therefore, be directed to the proposition as to whether any of them will be superseded by the Judicature Act when the same becomes operative.

Chapter 58 of the Judicature Act relates to the subject of Guardians and Wards and appears to have been intended to cover the subject fully, when taken in connection with the rest of the Act. I am impressed that the sixth subdivision of section one when read in connection with section two of the same Chapter must be deemed to supersede Act number 80, as well as Act 94 of 1913, which is amended thereby. While it is true that two measures relating to the same subject, and passed at the same session of the Legislature, will both be deemed to be operative if they are not inconsistent with one another, yet, such a construction can scarcely obtain where the measure subsequently enacted clearly indicates that it was the legislative intent to provide fully therein for the particular matter involved. In such event the Act subsequent in point of time in its passage will be deemed to supersede the prior enactment notwithstanding that the two Acts are passed at the same session. The same conclusion must be reached if the two measures are conflicting. In such case also, the later measure will control. While there is no con-

flict between Act number 80 and the Judicature Act, I am impressed, as above suggested, that the latter will supersede the former on the first of January next.

Sections 78 and 80 of Chapter 19 of the Judicature Act are identical with the amended sections of Act 101 of 1881 as found in Act 125 of 1915. In accordance with the above suggestions this measure will also be superseded. The same conclusion follows with reference to Act 159. The amended section therein appears as section 13 of Chapter 51 of the Judicature Act.

Act 200 is designed to prevent the plaintiff in a civil action from discontinuing, or submitting to a non-suit, without the consent of the defendant where the latter has actually entered upon his defense. There is no provision in the Judicature Act to which my attention is called that covers this matter. Section 8 of Chapter 15 of said measure forbids such discontinuance or nonsuit where notice of set-off or recoupment has been given and the same provision is found in section 17 of Chapter 69 but this provision is not as sweeping in its scope as is Act 200. Neither do I think that there is any such inconsistency as would operate to prevent both measures being given effect. Act 200 will, therefore, remain in force after the Judicature Act becomes operative.

Act 213 provides for a presiding Circuit Judge and for the powers and duties thereof. This measure can scarcely be said to be repugnant in any way to the Judicature Act nor are its provisions superseded thereby. The same observation may be made with reference to Act 217 which provides for the entering of judgment in certain cases notwithstanding the verdict of the jury. Section 15 of Chapter 22 of the original draft of the Judicature Act contained provisions designed to permit such procedure. Said section was, however, stricken out, from which it appears that the obvious intent of the Legislature was that Act 217 should remain in force.

Section 42 of Chapter 2 of the Judicature Act is identical in substance with Act 225. Accordingly the latter measure will be superseded when the former becomes effective. The same conclusion must be reached with reference to Act 284, the subject matter of which must be deemed to be fully covered by sections 14 and 15 of Chapter 62 of the Judicature Act.

Act 242 was intended to provide for the final disposition of a suit in Chancery in the event that the Circuit Judge hearing the same should die before the entering of the final decree and after the submission of the case. I find no provision in the Judicature Act designed to take care of such a situation; nor any clause inconsistent with this Act. It is my opinion accordingly that Act 242 will not be superseded or impliedly repealed when the Judicature Act shall go into effect. I am impressed that Act 256 is subject to similar considerations. This measure was intended to bar recovery on obligations claimed against unprobated estates after the lapse of a designated period. While the Judicature Act contains provisions limiting the time within which various actions may be brought, my attention is called to no clause that seems to have been enacted with the subject matter of Act 256 in contemplation. It occurs to me that this Act must be viewed as applying to a particular case and as being in harmony with the general provisions of the Judicature Act. Similar observations may be made with reference to Act 272 which has reference to the abatement of certain places maintained for undesirable purposes.

Inasmuch as this Act was approved on the same day as was the Judicature Act the presumption is strengthened that it was the legislative intent that both should be given effect. There are no provisions of the more comprehensive measure upon this particular subject nor is there any irreconcilable conflict between this Act and the provisions found in the Judicature Act upon the general subject of the procedure to be observed in the abatement of nuisances.

Act 280 confers upon Courts of Chancery jurisdiction over trusts created in certain cases for religious, educational or charitable purposes. Like the preceding Act this measure approved on the same day as was the Judicature Act. I am impressed that it must be construed in connection with section 43 of Chapter 61 of said measure which provides as follows: "The provisions of this Chapter shall not be construed to in any manner limit, charge (change) (?), modify or abolish the jurisdiction as it now exists, of the courts of Chancery of this State, of, over, or concerning, such trustees and trust estates, but the same shall remain and continue in all respects as though this Chapter had not been passed." This section seems to be an unequivocal declaration that the Judicature Act shall not be given effect of superseding measures previously in operation unless the same are clearly repugnant thereto. So construed, it can scarcely be claimed, I believe, that Act 280 will be superseded, or impliedly repealed, when the Judicature Act becomes effective.

Act 283 relates to the powers of a Court of Chancery to stay proceedings at law amending section 502 of the Compiled Laws of 1897. Section 8 of Chapter 19 of the Judicature Act is identical with said section 502. The amendment made by Act 283 so changes this section as to forbid the issuance of a writ of injunction from all courts of this State, which writ would so operate as to stay a suit in a Federal Court, or in any other State Court, unless the territorial jurisdiction be the same. I believe that this clause, which was added by Act 283, must be regarded as operative in conjunction with the Judicature Act. Stated somewhat differently, section 8 of Chapter 19 of the latter measure must be deemed to be modified by the amendment made by Act 283. Of course, in so far as the two sections are identical the Judicature Act will be construed as controlling and as having superseded, to that extent, the other measure, it becoming operative at a subsequent date. However, it can scarcely be said that the clause added to section 502 by Act 283 is inconsistent with, or repugnant to, the section referred to of the Judicature Act. Such being the case, and in view of the general considerations suggested, I believe that Act 283 must be regarded, subsequent to the first of January next, as operative except insofar as it is identical with said section of the Judicature Act.

Trusting that these suggestions will indicate my views with reference to the various Acts referred to, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

CRIMINAL LAW. A prosecution for obstructing justice may be maintained against one who procures a witness to absent himself in order to prevent the giving of testimony in a pending criminal case. *People vs. Boyd*, 174 Mich. 321.

September 10, 1915.

Mr. R. L. Lewis, Prosecuting Attorney, Charlevoix, Michigan :

Dear Sir—I am in receipt of your letter of the 6th inst. in which you refer to a certain case that has arisen in your County. As I understand the situation the complaining witness in a criminal case pending in your Circuit Court has been induced to leave the jurisdiction of the court, and to avoid service of a subpoena in order that the obtaining of his testimony might be prevented and a consequent postponement of the trial enforced. It appears that money was furnished to such witness, together with transportation. The party furnishing such money and thus procuring the witness to absent himself from the jurisdiction of the court knew that it was your intention to subpoena the witness and also that the prosecution depended upon evidence that he was expected to give. The question arises as to whether or not a criminal prosecution may be instituted against such party. You have requested my views as to the specific charge that may be brought.

From your statement it seems apparent that the witness who was induced to avoid the service of the subpoena and the giving of his testimony in the pending case, is guilty of a violation of section 11324 of the Compiled Laws of 1897. He has, if I understand the matter, taken money upon an agreement not to give evidence of an offense. The party procuring the witness to so conduct himself would, at common law, be regarded as an accessory before the fact. In accordance with section 11930 of the Compiled Laws of 1897, he must be deemed to be a principal in the commission of the offense. See in this connection *People vs. Chapman*, 62 Mich. 280. Quite possibly, also, the evidence is such as to establish the fact of a conspiracy to obstruct justice and a prosecution might in consequence be brought for such offense.

Leaving the matter of the probable conspiracy out of consideration, however, I believe that the person so procuring the witness to conceal himself is guilty of the common law offense generally designated as "obstructing justice." This offense was indictable at the common law and is accordingly punishable in this State by virtue of section 11795 of the Compiled Laws of 1897. I call your attention to the case of *People vs. Boyd*, 174 Mich. 321, which case was a prosecution arising out of a transaction similar to the one suggested by you. It is quite possible that this form of action will commend itself to you in preference to a prosecution based on section 11324, or based on the existence of a conspiracy.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

SCHOOL LAW. Where a district votes to discontinue school for the ensuing year acceptance of the pupils by an adjoining district may not be compelled nor may the voters at a special meeting determine to re-open the school.

September 10, 1915.

Mr. Joseph Stackable, Pinckney, Michigan:

Dear Sir—I have before me your letter of the 7th inst. in which you state that the voters of your school district decided at the last annual meeting to close the school for the ensuing year and to send your pupils to other districts. I note that the School Board in the adjacent district has refused to accept your pupils. You have asked to be advised as to whether or not they may be compelled so to do under the laws of this State.

In reply I would say that there is no provision of the statutes of Michigan relating to primary school districts by virtue of which the District Board of any district may be required to admit non-resident pupils. Section 19 of Chapter III of the General School Law grants permission to do so, and gives the Board power to fix the rate of tuition, subject to a prescribed limitation; but as stated it is not mandatory that pupils residing outside of the limits of the district shall be accepted.

The statute permitting the closing of any school and the sending of the children in the district elsewhere seems to contemplate that the district Board shall provide necessary transportation. It is specifically provided that "when such action has been taken the School Board shall have authority to use any funds, except library funds, in the hands of the treasurer to pay the tuition and transportation of all such children, and if necessary vote a tax for such purpose." This provision must, I believe, be taken to imply that where transportation is necessary and tuition is required to be paid the district in which the school is discontinued shall pay the same. There is no prescribed rate at which such transportation shall be furnished. Doubtless it was the intention of the Legislature in the enactment of this measure that necessary arrangements would be made by the District Board, and that an agreement would be entered into with an adjoining District before any action discontinuing the school is taken.

Having discontinued the school for the ensuing year, it is not now competent to rescind that action. The Supreme Court passed upon this identical proposition in the case of *Meek vs. Carpenter*, 178 Mich. 547. In this case the voters of the district had determined at the annual meeting to discontinue school and to send the pupils of the district elsewhere. Subsequently a special meeting was held and it was decided to re-open the school. A proceeding was brought to enjoin the officers of the district from employing a teacher and the Supreme Court granted the injunction.

Trusting that these suggestions will give you the information desired, I am,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

LINSEED OIL. It is not a criminal offense to sell $7\frac{1}{2}$ lbs. as a gallon, there being no fraud or deception of any kind.

September 10, 1915.

Hon. Burr B. Lincoln, Deputy Dairy & Food Commissioner, Lansing,
Michigan:

Dear Sir—I note from your communication of the 8th inst. that certain wholesale dealers who handle linseed oil advertise to sell seven and one-half pounds thereof as constituting a gallon. It appears that in actual sales the quantity of oil is figured by weight on the basis suggested. The question is presented as to whether or not any prosecutions may be based upon such a transaction.

Act 110 of the Public Acts of 1909 regulates the sale of linseed and flaxseed oil, prescribes the standard of purity thereof and contains provisions designed to prevent fraud in the sale of such oil or compounds containing it. In accordance with this measure the specific gravity at a temperature of 77 degrees Fahrenheit, must lie between 0.925 and 0.935, while the specific gravity at 60 degrees must be not less than 0.935 and not greater than 0.945. You state that in determining the basis of seven and one-half pounds per gallon the dealers have taken the lowest possible specific gravity, 0.9123, at the highest temperature, 104 degrees Fahrenheit. It does not occur to me, however, that the purpose of this Act of 1909 is to prescribe the weight of such oil that shall be sold as constituting a designated quantity by measure. Rather, as suggested above, it would seem that the purpose of the provisions relating to the specific gravity at specified temperatures was to secure a proper degree of purity. The title of the Act clearly suggests such purpose, that is, that the legislature in the enactment of this measure, sought to prevent the sale of adulterated oil. Had it been intended to require that a specified quantity by weight should be sold as a gallon it may be assumed I believe that provisions to that effect would have been incorporated in the statute. The Act being penal in its nature must be strictly construed, and it may not in consequence be deemed to render any act punishable as a crime unless the offense is clearly defined. Bearing in mind the general purpose of the enactment, as indicated by the title, it does not occur to me that any construction other than as above suggested is tenable.

Neither does it appear that such a transaction is in any way in violation of Act 168 of 1913, which measure was intended to prevent fraud and deception in the use of weights and measures. Clearly in the instant case, it can scarcely be claimed that an actual fraud is being perpetrated, or that retail dealers are being deceived, inasmuch as the wholesalers in question state in their advertising matter, and also on the face of contracts for the sale of oil, that seven and one-half pounds is regarded as constituting a gallon. It is not a question, therefore, of using an undersized measure; but rather of observing a more or less arbitrary rule by which such weight is regarded as equivalent to a gallon for the purpose of bargain and sale. In reply to your specific inquiry, therefore, I would say that in my opinion no prosecution may be predicated upon such a transaction.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

MORTGAGE TAX LAW. A deed given by an executor pursuant to section 9366, C. L. of 1897, to which is annexed a land contract executed prior to the first of January, 1912, is entitled to be recorded without the payment of a specific tax.

September 11th, 1915.

Mr. X. A. Boomhower, Prosecuting Attorney, Bad Axe, Michigan:

Dear Sir—Your communication of the 6th inst., requesting my views with reference to a certain question that has arisen under the Mortgage Tax Law, is at hand. It appears that a certain land contract for the sale of property was executed in 1904. The grantor under the terms thereof has died during the present year, leaving the sum of \$590.00 still due. Such amount has been paid to the executor, pursuant to the statute, and a deed has been given to which the original contract has been attached. The instrument having been presented for record, the question arises as to whether or not the specific tax under Act 91 of the Public Acts of 1911 must be paid on the contract before recording.

It does not occur to me that any specific tax is required to be paid under the facts as stated. Section 9366 of the Compiled Laws of 1897 makes provision for a transaction of this nature and requires that the original contract shall be "annexed to or embodied in every such deed or conveyance," made by the executor or administrator. It seems apparent, therefore, that such contract is to be regarded as a necessary part of the deed rather than as a separate instrument presented for record. Under the provisions of the Mortgage Tax Law the contract was not subject to the payments of the specific tax, it having been executed prior to the first of January, 1912. Inasmuch as it was not voluntarily presented for record in accordance with said Act before that date and the specific tax voluntarily paid, it is to be assumed that it has been taxed under the ad valorem system and pursuant to the general laws relating to taxation. It does not occur to me that the case stated by you is within the scope of the Mortgage Tax Law, or that it was contemplated by the Legislature that the specific tax should be required to be paid under such circumstances. As suggested, the instrument is not now presented for record under Act 91 of 1911, as an independent undertaking, but rather is to be regarded as embodied in and constituting a part of the deed given by the executor. I am impressed, therefore, that such deed is entitled to record without the payment of the specific tax on the land contract.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pl-O

INQUESTS. May be properly held by Justice of Peace or coroner only when conditions of the statute are complied with.

September 14, 1915.

Mr. A. J. Waffin, Prosecuting Attorney, Iron River, Michigan:

Dear Sir—You have requested an opinion from this department as to the construction of certain statutory provisions relating to the holding of inquests by coroners. You state that in your county such officers assert that they are entitled to be notified in all cases where a death has resulted from an accident of any nature; while the Board of Supervisors is inclined to question the propriety of holding inquests where there is a sufficient number of creditable witnesses as to remove any question of intentional violence or foul play. The precise point at issue seems to be whether or not it is competent for a coroner to hold an inquest in his own discretion in any case, regardless of whether or not a petition signed by five or more citizens of a township, requesting such inquest, is presented to him. Upon this proposition you have asked that this department give you its opinion.

Section 11832 of the Compiled Laws of 1897 confers upon a coroner, authority to hold inquests anywhere within the county. The provisions of the statutes relating to such proceedings conducted by justices of the peace are specifically made applicable and it is further declared that "all powers by the general laws of this State, conferred upon justices of the peace relative to such inquests are hereby conferred upon such coroners." Section 11829 which was enacted in 1861 forbids justices of the peace to hold inquests in incorporated cities unless both of the coroners of the county are absent or incapacitated for some reason. It is specifically declared that as to inquests within a city the judgment of the coroner is to be controlling upon the question as to whether or not an inquest is necessary. Doubtless, such proceedings when conducted in incorporated cities by coroners, are subject to the provisions of this section. The question next arises as to whether or not inquests conducted by coroners outside of incorporated cities are subject to the same rule. To determine this question we must look to the provisions of the statute regulating the holding of inquests by justices of the peace, which provisions are applicable to coroners except as modified by the express language of section 11829.

Sections 11818 and 11819 must be regarded as controlling upon this proposition. Both of these sections were amended by Act 48 of the Public Acts of 1885. The changes that were then made are, I believe, of great significance as bearing upon the construction that should be given. Said sections appear as sections 7970 and 7971 of the Compiled Laws of 1871, reading, in such compilation, as follows:

"7970. Justices of the Peace shall take inquests upon the view of the dead bodies of such persons as shall have come to their death suddenly or by violence, and of such persons as shall have died in prison.

7971. As soon as any Justice of the Peace shall have notice of the dead body of any person found or lying within the county,

who is supposed to have come to his death in any manner described in the preceding section, he shall forthwith summon not less than six nor more than twelve good and lawful men of the county, to appear before him at such place as he shall appoint."

By the amending Act of 1885, above referred to, these statutes were placed in the form in which they appear in the compilation of 1897. For the purpose of determining the effect of such amendment I will set forth sections 11818 and 11819.

"11818. Justice of the Peace shall, subject to the provisions of this chapter, take inquests upon the view of the dead bodies of such persons as shall have come to their death suddenly, or by violence, and of such persons as shall have died in prison.

11819. As soon as any justice of the peace shall have notice of the dead body of any person found or lying within the county, who is supposed to have come to his death in any manner described in the preceding section and the petition of not less than five citizens of the township, city or village, any one of whom shall not be a constable or deputy sheriff, in which the dead body may be lying, shall have been filed with said justice, praying that an inquest be had in such case, he shall forthwith summon six good and lawful men of the county to appear before him, at such place as he shall appoint within said county."

It will be noted that, prior to this amendment, no provision was contained in the statute with reference to a petition signed by citizens of the township. The holding of an inquest was, therefore, a matter within the discretion of the justice, or the coroner in case the latter official assumed jurisdiction. The amending Act inserted in the first section (that is, in section 11818, C. L. 1897) the words "subject to the provisions of this Chapter,"—while no change was made in the second section (Section 11819, C. L., 1897) other than to incorporate therein the clause relating to the petition for the holding of the inquest. It must be assumed, in accordance with well-settled rules of statutory construction that it was the intention of the legislature to change in some respect these sections that were thus amended. Analyzing the provisions that were added, the conclusion seems to be unavoidable that it was the intention to take away from justices of the peace the right to hold inquests unless a petition signed by not less than five citizens of the township is presented. Presumably the purpose of the amending Act of 1885 was to remedy a condition that the legislature regarded as undesirable. The provisions of the first section were, therefore, made subject to the rest of the Chapter, so that we can scarcely regard section 11818, standing alone, as conferring upon the justice, or upon the coroner, unqualified jurisdiction to conduct an inquest when he may deem the same expedient. Any other construction must necessarily ignore the amendment of 1885. Section 11819 clearly implies that the petition is required in order to justify the official in proceeding to conduct the inquest.

No decision of the Supreme Court upon the point is called to my attention. Doubtless the question can not be regarded as a settled one

in the absence of such a decision. However, I am constrained to the opinion, for the reasons above suggested, that the obvious intention of the legislature in the enactment of the amendment of 1885 may not properly be disregarded and that in consequence inquests held by a justice of the peace, or by a coroner (except in incorporated cities) should be based upon facts indicating a death from violence or foul play, and upon a petition requesting such inquest, signed by not less than five citizens of the township or village. Section 11829, relative to inquests in cities, may I believe be regarded as special legislation and consequently has not been repealed by the amendment to the general law, subsequently enacted.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

SCHOOL LAW. Temporary organization of school board not authorized. Right of officers to hold over considered.

September 14, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Capitol:

Dear Sir—I am returning to you herewith communication addressed to you by Mr. W. E. Wilson, Secretary of the Board of Education of the city of Wyandotte. You have requested that this department render you an opinion with reference to the situation referred to therein. As I understand the matter the Board of Education has attempted to effect a so-called temporary organization, electing a chairman and a secretary to hold said offices until permanent officials may be chosen. It further appears that this action has been taken because of the inability to elect permanent officers, the Board being equally divided in its balloting therefor. The question arises as to the authority of such temporary officers chosen for the purpose suggested, and as to the rights of the retiring officials to hold over.

In accordance with the Charter of the city of Wyandotte the Board of Trustees consists of six members who are elected on the second Monday of July but who do not assume office until the first Tuesday of September following. The term of office is expressed to begin from the latter date and to continue until the successor is elected, qualified, and actually enters upon the performance of the duties of the office as such member. It is further declared, section 314 of the Charter that: "At the first regular meeting of the Board after each annual election, the board shall elect from their own number a president, and they shall also at such time elect a secretary, who may or may not be a member of the Board * * *." It will be noted that no provision is made by the Charter for such a temporary organization as seems to have been attempted by the Board of Education in this instance. Such being the case, it must be regarded as unauthorized, and the so-called temporary president and temporary secretary can not be regarded as possessing any authority. It is the intent of the law without doubt that a regular and permanent organization shall be effected at the first regular meeting after the new trustees qualify and enter upon the performance of

their duties, that is, at the first regular meeting held on or after the first Tuesday in September.

This brings us to the question as to whether or not the former secretary and president have the right to hold over and perform their duties as officers of the Board until a new regular organization is perfected. Insofar as the president is concerned, I am impressed that this question must be answered in the negative if his term as trustee has expired. Under the specific provision of the Charter one who is not a member of the Board is not entitled to serve as its president. I infer that the duly elected trustees have duly qualified and that they are in consequence entitled to their respective position as members of the Board. On the other hand, if the term of the former president as a trustee has not expired no legal objection occurs to me that would operate to prevent his continuing to serve as an official of the Board until his successor in such position is duly and properly chosen by the Board.

The secretary however, is not required to be a member of the Board. It seems to me, therefore, that the secretary duly chosen at the last regular organization, which presumably was effected a year ago, may continue to perform the duties pertaining to his office as secretary, until the selection of a new secretary in the manner contemplated by the Charter, regardless of whether or not said secretary has been a member of the Board of Trustees, or whether or not his term has expired. It can scarcely be presumed that it was the intention of the framers of the Charter that the Board should be left without proper officials by whom its business might be carried on. However, with reference to the president, no other conclusion than as above suggested seems tenable.

Trusting that these suggestions will indicate my views upon the situation, I am,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

STATE PATIENTS. Patients admitted to the Michigan Home and Training School from either the State Industrial Schools or State Public School at Coldwater, are to be carried as State patients from the beginning.

September 15, 1915.

Dr. H. A. Haynes, Med. Supt., Michigan Home and Training School,
Lapeer, Michigan:

Dear Sir—I have before me your communication of the 7th inst., in which you ask if you are right in carrying as State patients such patients as are committed to your institution from the Industrial School for Girls at Adrian, Industrial Home for Boys at Lansing, and the State Public School at Coldwater, etc.

Act 101 of the Public Acts of 1909, provides for the admission into the Home for Feeble-minded and Epileptic, now the Michigan Home and Training School, upon order of the probate court for the county wherein any of the industrial schools or the State Public School at Coldwater is located, upon adjudication of feeble-mindedness or epilepsy, and you

would be warranted in carrying them as State patients from the beginning upon the theory that they were wards of the State when committed to your institution.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Gr-g-O

INSANITY LAW. Physicians' certificates and application should accompany order of commitment made by probate judge committing patient to asylum.

September 15, 1915.

Mr. J. B. Munson, Medical Superintendent, Traverse City State Hospital, Traverse City, Michigan:

My Dear Sir—I have before me your communication of the 7th inst., in which you ask for an interpretation of section 16 of Act 297 of the Public Acts of 1915, and in particular as to whether it is necessary for copies of the physicians' certificates and applications to accompany the order of the probate court committing a patient to the hospital for treatment, or whether the law contemplated that only the order itself be sent to the Medical Superintendent.

Prior to the passage of Act 97 of 1915 the law provided, by section 15 of Act 25 of 1911, that "a copy of such physicians' certificate, together with a copy of the application for commitment of the patient, shall accompany the order of commitment." Section 15 of Act 25 was not amended by the latter Act of 1915 and is still applicable, and while section 16 of the 1915 Act does not specifically provide for service upon the Medical Superintendent of anything except the order of admission, when read in connection with section 15 of the 1911 Act, it would require the physicians' certificates and the application to accompany the same.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-pi-O

TAXATION—STATE PROPERTY. All property belonging to the State or any political subdivision thereof is exempt from taxation for special benefits.

September 15, 1915.

Hon. John B. Mathews, Clerk, Board of State Auditors, Capitol:

My Dear Sir—You have requested an opinion from this department as to whether the City of Jackson, or the County of Jackson, may legally assess a paving or sewer tax against property owned by the State of Michigan and used in connection with the State Prison at Jackson, Michigan. In other words, whether two certain items constituting a special tax, one for paving and one for sewer, would become a lien upon the property or a lawful claim against the State.

All property of the State is presumptively exempted from the operation of the General Tax Law and unless there is positive legislative authority for levying a tax against State property, such a tax would be void. The great weight of authority is in favor of carrying the exemption of State property to all special assessments for benefits, and the Supreme Court of this State, in the case of Big Rapids vs. Supervisors, reported in 99 Michigan, page 351, seems to lay down the rule in this State that, unless express authority is conferred by statute, the exemption is extended to property belonging to the State or any political subdivision thereof so far as it relates to assessments of taxes for benefits conferred, and that whenever the taxing power seeks to impose such a tax upon such property it must be able to point out the legislative or constitutional authority therefor. Accordingly, I am of the opinion that the two items of tax referred to in your communication, one for paving in the year 1913, and the other for sewer tax of that same year, are not a valid tax and their collection could not be enforced against the State.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-pi-O

PERJURY. If a posted person or one to whom the sale of liquor has been forbidden makes affidavit under Act 224 of 1915 for the purpose of obtaining intoxicating liquors shipped to him, is guilty of perjury.

September 15, 1915.

Mr. Emerson R. Boyles. Prosecuting Attorney, Charlotte, Michigan :

Dear Sir—I have before me your communication of the 7th inst. in which you ask if a posted man, that is, one to whom druggists have been forbidden in writing to sell intoxicating liquors, in local option territory makes the affidavit required by Act 224 of the Public Acts of 1915 in order to obtain delivery of shipment of intoxicating liquors, in which affidavit he states that he is not disqualified, etc., is he guilty of perjury?

Permit me to call your attention to section 11306 of the Compiled Laws of 1897, which provides that, "If any person of whom an oath shall be required by law, shall wilfully swear falsely in regard to any matter or thing, respecting which such oath is authorized or required, such person shall be deemed guilty of perjury, and shall be punished by imprisonment in the state prison."

Under the above quoted section I am of the opinion that if a man to whom sales of intoxicating liquor has been forbidden in writing by the proper party made the affidavit required by Act 224 of 1915, stating that he had not been thus forbidden and that he was a proper person to whom liquor could be sold and delivered, he would be guilty of perjury under said act.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Gr-g-O

INCORPORATION. Co-operative companies for sale of agricultural products may incorporate under Act 398 of 1913.

September 15, 1915.

Mr. Thomas D. Meggison, Prosecuting Attorney, Central Lake, Michigan:

Dear Sir—I have before me your communication of the 10th inst. in which you state that a group of farmers in your section wish to organize for the purpose of co-operation in the sale of farm products, etc., and you desire to know whether they could lawfully organize under Act 398 of the Public Acts of 1913.

Act 398 of the Public Acts of 1913 is entitled, "An Act to provide for the organization, regulation and conduct of co-operated companies and associations." Section 1 of the act provides that—

"Any number of persons, not less than five, desiring to become incorporated for the purpose of conducting any agricultural, dairy, mercantile, manufacturing or mechanical business in the State of Michigan upon a co-operative plan, or in accordance with the principles of co-operation, may associate themselves as a co-operative corporation company, association, society or exchange, and by complying with the provisions of this act, they and their successors and assigns may become a body politic and incorporate."

If your co-operative organization is to have for its purpose the conducting of any one of the several lines of business enumerated in section 1, it would be competent for them to incorporate under the terms of the act. But if the object to be accomplished is not such as is specifically mentioned in section one of the act then they could not incorporate under it.

Very respectfully,

GRANT FELLOWS,

Attorney General.

Gr-g-O

FISH LAWS. Section 6, Act 226, P. A. 1915 confines the total number of fish permitted to be taken from inland lakes to twenty-five.

September 16, 1915.

Hon. William R. Oates, State Game, Fish and Forestry Warden, Lansing, Michigan:

Dear Sir—You have recently requested an opinion of this department as to the construction to be given to section 6 of Act 236 of the Public Acts of 1915, which provides that, "No person shall take, catch or kill or have in his possession at any one time more than a total of twenty-five of any of the following kinds of fish: bluegills, sunfish, rock bass, white bass, calico bass, perch, wall-eyed pike and crappies." You specifically request an opinion as to whether the language above quoted would permit the taking and having in possession of twenty-five fish of each specific class mentioned, or whether the language would confine the

lawful number to twenty-five fish taken from any one or more of the specific classes of fish mentioned.

It is a rule of construction of statutes that the language employed therein must be given its usual and universally accepted meaning and significance, and that the intent of the Legislature can only be gathered from the language employed in framing the act. The language employed in that portion of the act under consideration, to-wit, "A total of twenty-five of any of the following kinds of fish," appears to me to be susceptible of but one construction, and that is, that a person is permitted to take, catch, kill, or have in his possession at any one time no greater number of individual fish of the species specifically named in the statutes than a total of twenty-five. In other words, he would be limited to a total of twenty-five fish even though some of that twenty-five were bluegills, some were sunfish, some bass, etc. In placing this construction upon the language, I am governed largely by the use of the word "total" which according to Webster is defined as the whole, entire, complete and integral. Certainly this definition when applied to the term as used in the act would admit of no other conclusion than that above stated.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Gr-g-O

REGISTER OF DEEDS—FEES OF. Not entitled to extra fee for filing discharge of mechanic's lien.

September 16, 1915.

Mr. Dan. A. McGaffey, Register of Deeds, Pontiac, Michigan :

My dear Sir—I have before me your communication of recent date in which you ask for an opinion relative to the construction to be given section 10714 of the Compiled Laws of 1897 which prescribes the fees of the Register of Deeds for filing statements or accounts of contractors, material men, etc., in perfecting a mechanic's lien under the statute. The particular part of the section under consideration provides that "the register of deeds shall receive the sum of seventy-five cents as his fees for the filing of such statement or account, and all subsequent papers filed with him relating to such lien." You specifically ask if a written discharge of said lien is to be included as "subsequent papers."

You will note that the language of the statute is in the plural, and provides for the sum of seventy-five cents "as his fees," and this must be construed to mean all fees for filing the statement or account, and the expression "all subsequent papers filed with him relating to such lien,"—would certainly include any paper filed with the register for the purpose of perfecting a discharge of such lien, and the register would not be entitled to extra fees for filing such discharge.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-pi-O

UNIVERSITY HOSPITAL. As used in Act 274 of 1913 and Act 268 of 1915 include both individual hospitals constituting a part of the University.

September 22, 1915.

Hon. William H. Murray, Judge of Probate, Ann Arbor, Michigan:

My dear Sir—I have before me your communication of recent date requesting the opinion of this department as to whether the term “University Hospital” as used in Act 274 of the Public Acts of 1913 and Act 267 of 1915, would include the Homeopathic Hospital which is also a part of the University of Michigan.

Both of said Acts provide for free hospital service and medical and surgical treatment for persons afflicted with a curable malady or deformity and who are unable to provide themselves with such treatment. The evident intent of the Legislature was to provide for free hospital treatment for such unfortunates as are from time to time visited with a curable malady or deformity which could be remedied by skillful medical or surgical treatment, and it appears that it was also the intent of the legislature to provide for such free treatment at its State University Hospital. A significant feature of the Act which will aid us in construing the intent of the Legislature in using the term “University Hospital” will be found in each of the Acts in question, in that it is provided by section 3 of each Act that it shall be the duty of the Superintendent of the University Hospital, or the admitting officer of the University upon receiving such patients to provide a proper bed or room in the University Hospital, and assign or designate the clinic of the Hospital to which such person or patient shall be assigned for treatment. It would appear that the term “University Hospital” as employed in the Act is to be given its broadest construction and would include either of the individual hospitals constituting a part of the University of Michigan, the evident intent of the Legislature being that upon receipt of the patient some officer in charge would have authority to designate to which clinic the patient should be assigned.

Trusting I have made myself clear as to my interpretation of the terms employed in the Act, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

G-pi-O

JUDICATURE ACT. Certain portions of said Act held to supersede parts of Acts 89 and 123 of P. A. 1915.

September 22, 1915.

Hon. Coleman C. Vaughan, Secretary of State, Capitol:

My dear Sir—You have recently requested an opinion from this Department as to whether Acts 89 and 123 of the Public Acts of 1915 are superseded by what is known as the Judicature Act.

In connection with your request I would state that Act 89 of 1915 will become entirely superseded by section 28 of Chapter 50 of the so-called

Judicature Act from and after the date of its taking effect, January 1st, 1916.

As to Act 123 of 1915, I find that section 3 thereof in providing "that such affidavits, whether recorded before or after the passage of this Act, may be received in evidence in any civil cause, in all courts of this State, and by all Boards or officers of the State in all suits or proceedings affecting such real estate and shall be prima facie evidence of the facts and circumstances therein contained," will, in effect, become superseded by sections 19, 20 and 21 of Chapter 17 of the so-called Judicature Act when the same shall go into effect.

As to sections 1 and 2 of said Act 123 I do not find any part of the Judicature Act which could be held to entirely supersede them.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

G-pi-O

TOWNSHIP ROAD BONDS. May be issued for township roads upon a majority vote in favor thereof, not to exceed five per cent of assessed valuation of the township.

September 22, 1915.

Mr. Alva Gregory, Bellaire, Michigan:

My dear Sir—I have before me a communication from Mr. F. B. Dickerson requesting an opinion from this department as to whether money received for Township road purposes by bonding the Township must be used upon State reward roads. Also the limit of bonds a Township can issue for road purposes. Mr. Dickerson asks that the opinion be directed to you in that he is leaving home for sometime and desires you to have the advice at hand.

In answering Mr. Dickerson's inquiries I would direct attention to section 8 of Chapter XIV of the General Highway Laws, same being Act 283 of the Public Acts of 1909, as amended, which, together with the succeeding sections, provides for Township road bonds. Said section 8 provides that a Township Board of any organized Township in the State of Michigan shall be authorized and empowered, upon an application being first filed with such Township Board, signed by at least twenty-five freeholders of such township, to borrow a sum of money, *not exceeding five per centum of the assessed valuation of such township*, on the faith and credit of such Township, and to issue the bonds of such Township therefor, the money so borrowed to be used for the purpose of graveling, macadamizing, building, stone roads, building or repairing bridges, "or in any other way in the discretion of the Township Board providing for the better construction, improvement and care of the highways in such Township." Said section further provides that the proposition of bonding said Township shall be submitted to the voters at a regular township meeting, or at a general or special election called for that purpose, and that such proposition must receive a majority vote of such electors.

The sections following section 8 of said Chapter further provide for the procedure to be had at such election, and no doubt will be to your interest to read if your township contemplates such a movement.

Hoping I have made myself understood in this matter, I am,

Very respectfully,

GRANT FELLOWS,

Attorney General.

Gr-pi—enc.

MALE GRANTORS. DEEDS. The provisions of Act 79 of 1915 requiring male grantors to state whether married or single, does not apply to a grantor in a representative capacity and whose wife holds no interest in the property conveyed.

September 22, 1915.

Mr. Milton Hart, 302 Hartford Bldg., Chicago, Ill.:

My dear Sir—I have before me your communication of recent date as to whether or not conveyances of real estate by trustees for benefit of creditors should contain a statement as to whether the grantor is married or single, before being entitled to record in the State of Michigan.

Act 79 of the Public Acts of 1915 provides that "all written instruments conveying or mortgaging real estate or any interest therein, hereafter executed, shall state whether or not *any and all male grantors, mortgagors, or other parties executing the same* are married or single." The remainder of the Act provides that the register of deeds of the county in which any such instrument is offered for record shall refuse to receive and record the same unless it conforms to the provisions of the Act.

The evident intent of the Legislature in enacting said Act 79 into law was to protect future grantees of real estate from defective titles growing out of the wife's inherent right of dower in and to property of former grantors, and the object to be accomplished by the Act in question would not attach to deeds of conveyances wherein the wife of the grantor held no dower interest, such as conveyances made by legally constituted trustees, administrators, executors, guardians, etc.

While the Act in terms seems to include any and all male grantors, mortgagors, or other parties executing any conveyance to real estate or any interest therein, I am of the opinion that the statute should be construed with reference to its spirit and reason and that to extend the terms of the Act to conveyances made by grantors whose wives would hold no vested interest in the lands conveyed, would be to carry the construction beyond the confines of the spirit, and intent of the Act.

Hoping I have clearly expressed my opinion as to the interpretation to be placed upon the statute in question, I am,

Very respectfully,

GRANT FELLOWS,

Attorney General.

G-pi-O

SCHOOL LAW. The boundaries of fractional districts may be changed so as to conform to the township boundary lines under the provisions of section 2 of Act 117 of 1909, as amended, even though the same be subsequent to the time of organization of the township district.

September 23, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Capitol:

Dear Sir—We are in receipt of your communication of the 21st inst. wherein you ask:

“If a township is organized as a township school district under Act 117, Public Acts of 1909, and there exist at the time of such organization fractional districts parts of which are in other townships which are not organized under such Act and are not organized as township school districts under any Act, do the township boards of the townships concerned have authority to change the boundary limits of such district and have them conform to the boundaries of the township, if such change is not made at the time of organization of said township district? If not who does have the authority? Sections 222 and 223 seem to conflict with Section 245 of said Act.”

From the above it would appear that a certain township is not organized as a township school district; that at the time of the organization fractional districts, parts of which are in other townships not organized as township school districts under Act 117 of 1909 or any other Act were in existence. It would thus appear from your communication that at the time of organization the boundaries of the township district were made to extend outside of the township, embracing territory in adjoining townships and that now it is desired to alter the boundaries of such township school district so that the same will conform to the boundaries of the township. If this be the situation we are of the opinion that the same may be done under the provisions of section 2 of Act 117 of the Public Acts of 1909, as amended, the same being Compiler's Section 223 of the General School Laws, Revision of 1913, wherein it is provided, among other things:

“Provided further, That in any case where a fractional district has been organized heretofore, such territory may be divided so that the township school district boundary lines shall conform, to the township boundary lines, said division being made in their discretion by the township boards of the townships in which the territory may be located, said boards meeting in joint session for such purpose.”

As above stated, such change shall be made in the discretion of the township boards of the townships in which the territory may be located.

Section 245 mentioned in your communication deals with an entirely different subject matter, namely: where the boundaries of townships are

altered either by division or consolidation and in our opinion does not affect the situation like the one presented in your communication.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-pi-O

LIQUOR LAW. Garfield Township having a population of 1,186 exclusive of incorporated cities or villages is entitled through proper action of the Township Board in conformity with the statute, to permit saloons to open at six o'clock in the forenoon and to remain open not later than eleven o'clock in the afternoon on week days except on the days specified in the statute.

September 24, 1915.

Mr. Prentiss M. Brown, Prosecuting Attorney, St. Ignace, Michigan:

Dear Sir—We are in receipt of your communication of the 17th inst., wherein you state:

"I write to ask your opinion of a portion of section 5395 of C. L., 1897, as amended by Act 170 of 1911, being section 17 of the Act; 5071 of the new Howell. I refer to that portion giving villages and township boards in certain cases, authority to allow saloons to open earlier and close later.

I was requested to give an opinion by the supervisor of Garfield township which has 1,186 population and no incorporated cities or villages, or villages with police protection. I hold that the statute permitted the town board to pass such ordinance as the statute indicates. Many disagree with me, stating that the phrase, "where there is police protection" refers to and modifies the words "Townships" preceding some ten words. In my judgment the phrase refers to "villages" immediately preceding and to no other words.

I will appreciate it if your office will give me a ruling as to whether the township mentioned can by its board pass such ordinance."

In reply we are of the opinion that the Township of Garfield, if possessing a population equal to that stated in your communication, is authorized by statute to pass the ordinance in question. You will note from an examination of said section 17, as found in Act 291 of 1909, that it is provided: "That in all cities, incorporated villages and townships of not less than one thousand population, exclusive of villages, where there is police protection, the common council * * *." This particular section was subsequently amended by Act 170 of 1911 wherein it is provided "that in all cities, incorporated villages and townships of not less than one thousand population, exclusive of villages where there is police protection, the common council * * *."

From a comparison of the two it will be noted that the language is identical but that the "," found in the 1909 Act after the word "villages" is left out of the 1911 amendment which would indicate that your

construction of the 1911 amendment is correct. Furthermore this department advised in a letter to Mr. William J. O'Brien, Prosecuting Attorney, Munising, Michigan, under date of September 16th, 1909, that even under the 1909 Act townships having that police protection afforded by the laws of the State, namely, constables, might in conformity with the statute, permit saloons to remain open from six o'clock in the forenoon until eleven o'clock in the afternoon of week day nights except election days and holidays. In other words, the phrase "police protection" was construed to mean simply that protection afforded by State law.

Trusting that this sufficiently answers your inquiry, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-pi-O

SOLDIERS' RELIEF COMMISSION. The County Board of Supervisors has no authority with respect to the distribution of relief funds raised under the provisions of Act 214 of 1899, such authority resting entirely with the Soldiers Relief Commission.

September 25, 1915.

Mr. James O'Neill, Prosecuting Attorney, Ironwood, Michigan:

Dear Sir—We are in receipt of yours of the 17th inst., enclosing correspondence received by you from Hon. Curtis Buck, Judge of Probate of your County, relative to the power and authority of the Soldiers Relief Commission. From such correspondence it appears that a controversy has arisen between such Commission and the Board of Supervisors relative to respective duties in distributing the fund collected for the relief of indigent soldiers, the Board of Supervisors taking the position that it is the proper body to pass upon the question of relief and the consequent use of such fund.

In reply, Act 214 of the Public Acts of 1889 provides for the spreading of a tax not exceeding one-tenth of a mill on each dollar, upon the taxable property of each township and city, for their respective counties, for the purpose of creating a fund for the relief of honorably discharged indigent soldiers, sailors and marines of the war of the rebellion, etc.

Section 2 of said Act provides for the appointment of a Commission by the Judge of Probate in each county. Section 2 provides, among other things, that "the Soldiers' Relief Commission, on the first Monday of October in each year, shall proceed to determine the amount necessary for aid and relief to be granted such person under this Act, * * * * The Commission may determine not only the sum to be paid, but the manner of paying the same, and may discontinue the payment of such relief in their discretion, and there shall be no appeal from their decisions."

From an examination of the various sections of the Act it would appear that the sole authority with respect to the distribution of funds, rests with the Commission and that the fund raised in each county,

shall be administered by the said Commission in its discretion. We are of the opinion that the Board of Supervisors has no authority to interfere with the Board in the discharge of this duty and consequently are constrained to advise that the question of such distribution, who are the proper distributees, and the amount that should be paid each, is not a question for the Board of Supervisors but rests entirely, within the limitations prescribed by the statute, with the Soldiers' Relief Commission.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

MICHIGAN RAILROAD COMMISSION. Has authority to make whatever regulatory orders may be necessary, in the interest of public safety, with respect to high tension wires of the Toledo & Western R. R. Co., situated on the main street of the village of Morenci.

September 25, 1915.

Michigan Railroad Commission, Lansing, Michigan:
Attention of Mr. Cunningham.

Gentlemen—We are in receipt of yours of the 15th inst., wherein you state:

“As we are somewhat in doubt as to our authority in the matter covered by the entire file enclosed, we would appreciate it very much if you will give us an opinion as to what our authority would be in the premises.

The matter of removing the railroad or the wires from the street at Morenci is one over which we feel that we have no authority but we do have the power to regulate the height, size of poles and the manner in which the wires are installed. In other words, our specifications govern those matters, and we would have the authority to see that those specifications are complied with. Will you kindly give us an opinion with as little delay as possible so we may make an inspection at Morenci.”

In reply you are advised that in our judgment it is within the power of your Commission to regulate, in the interest of public safety, the use of the high tension wires in question, in the public streets. If the wires as presently located are a menace to public safety your Commission, in our judgment, would have authority to make such Order in the premises as may be necessary for the protection of the public and we are inclined to the opinion that if your Commission should determine that such protection could not be afforded otherwise you would have authority to order a removal of the said wires from the public streets. Certainly you would have authority to make necessary orders as to height, size of poles, etc.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

ARRESTS. One guilty of wife desertion as provided in Act 144 of 1907 is not privileged from arrest by reason of the fact that such person is in the service of the United States Navy.

September 25, 1915.

Mr. Harris E. Galpin, Prosecuting Attorney, Muskegon, Michigan :

Dear Sir—We are in receipt of yours of the 16th inst., requesting an opinion as to whether an enlisted sailor of the navy can be arrested under a criminal warrant charging him with desertion and abandonment of his family.

In reply your attention is called to Section 1640 of Howell's Michigan Statutes, second edition, wherein it is provided :

"All officers and enlisted men who may be in the actual service of this State or of the United States, in all cases, except for treason, felony or breach of the peace, shall be privileged from arrest and imprisonment during the time of such actual service, and for a period of six months after such service shall cease, and their separate property shall during the same period be exempt from all process by way of execution, levy, seizurement of attachment for debts contracted prior to or during such service: Provided, however, That the time during which any such person shall be in such actual service shall not be computed in the limitation for the bringing of any action or the proceeding provided by the general laws of this State."

It will be noted from the above that the exemption does not extend to those committing a felony. Act 144 of 1907 provides, in part, as follows :

"Section 1. Any person who deserts and abandons his wife, or deserts and abandons his minor children under fifteen years of age and without providing necessary and proper shelter, food, care and clothing for them, shall upon conviction be deemed guilty of a felony * * *."

From the above it is apparent that one guilty of this offense is not privileged from arrest under the section first above quoted.

We would suggest, however, that before attempting to take such person into custody the matter should be taken up in detail with the Secretary of the Navy at Washington in order that there may be no hitch in the proceedings when it is sought to take such offender into custody.

Respectfully yours,
GRANT FELLOWS,
Attorney General..

Cr-pi-O

LIQUOR LAW. Cream of Hops, a beverage containing from .29 to .49 of one per cent alcohol is within the meaning of Act 381 of 1913, as amended by Act 224 of 1915, and the information required by section of said Act must appear on the outside of package containing the same.

September 28, 1915.

Mr. O. L. Smith, Prosecuting Attorney, Ithaca, Michigan:

Dear Sir—We are in receipt of yours of the 21st inst., enclosing copy of analysis of Cream of Hops manufactured by the Temperance Beverage Company of Chicago, Illinois. You request our opinion as to whether this drink is an intoxicating liquor within the meaning of Act 381 of the Public Acts of 1913, as amended by Act 224 of the Public Acts of 1915, wherein it is required that certain information be made to appear on the outside of packages of intoxicating liquors.

In reply you are advised that this department has uniformly held that any malt liquor containing alcohol even though the same be present only in small quantity and the liquor non-intoxicating, is within the prohibition prescribed by the Local Option Laws. In this connection we call your attention to the case of *People vs. Wilcox*, 152 Mich. 39, wherein a conviction was sustained for the sale of malt mead, a non-intoxicating drink containing less than two per cent of alcohol. The Supreme Court of this State has apparently proceeded upon the theory that a beverage containing any alcohol is within the inhibition of the statutes. If, as before stated, the sale of such liquors are prohibited by law, in Local Option Counties, the information and marking required by the Act in question would apply to the beverage in question.

Respectfully yours,

GRANT FELLOWS,
Attorney General.

Cr-pi-O

TAXATION. Municipal bonds of the City of Moose Jaw, Saskatchewan, are taxable under the provisions of Act 142 of 1913, as amended by Act 254 of 1915.

September 28, 1915.

Mr. F. W. Bailey, County Treasurer, Stanton, Michigan:

Dear Sir—We are in receipt of yours of the 15th inst. wherein you state:

"I have two municipal bonds of City of Moose Jaw, Saskatchewan, Canada, presented to pay tax under Act No. 254, Public Acts of 1915, approved May 17, 1915. Amending P. A. No. 154 of 1913. Would ask if these bonds come under provisions of this Act, they are of \$1,000.00 each and owned by resident of this County. If they do not come under this Act is there any other act under which I should receive tax and issue certificate for it?"

In reply we are of the opinion that the bonds in question are taxable under the provisions of Act 142 of the Public Acts of 1913, as amended

by Act 254 of 1915. Section 2 as amended provides, in part, that "any person may take or send to the office of the treasurer of the County where he resides any secured debt as defined in section one of this Act, or any bond issued by any State, county, township, city, village, school district or good roads district outside of this State * * *." The language above quoted we think is sufficiently comprehensive to include the bonds regarding which you request information.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-pi-O

CRIMINAL LAW. A prosecution will lie under section 5923 (C. L. 1897) against one who refuses and neglects to provide support for the wife except with his people when the treatment afforded the wife at such place renders it impossible for her to remain. The minority of the minor does not exempt him from the operation of the statute.

September 29, 1915.

Mr. John Jones, Prosecuting Attorney, Ontonagon, Michigan:

Dear Sir—We are in receipt of yours of the 23rd inst. wherein you state:

"I have a peculiar situation here upon which I would like your counsel. In the month of June a boy past 18 but less than 21 years of age, was arrested in this county for bastardy and settled by marrying the complainant. After the marriage, she went to her parents home and he to his parents with the understanding that he would send for her in a few days. He did not do this and after the lapse of some weeks, was arrested under the disorderly statute for non-support. Some question came up as to his ability to support his wife and child and his father claimed to be entitled to the young man's wages. The matter was finally fixed up by the young man and the father taking the wife and child home with them. She remained with them a matter of three or four weeks and left taking the baby with her, claiming that her husband and his mother treated her so cruelly that she could not stay. There is no claim on her part that she was struck or beaten in any way, but she claims that they refused to talk to her except to apply abusive language to her and call her names and accuse her of all manner of improper things, but this became intolerable and that she could not stand it any longer.

She now wishes proceedings started under the criminal law if possible to compel him to support her and the child. The defense will undoubtedly be that he was supporting her until the time she left and will support her if she returns. There is also a question which I don't seem to work out satisfactorily from the statutes and decisions, and that is whether marriage of a boy under 21 so far emancipates him as to entitle him to his own wages against a claim of his father to the wages. If the father is entitled to his wages, then I suppose the young man is not of sufficient ability to support his wife and child.

I would be very glad to have your opinion on the matters covered by the foregoing."

In reply you are advised that in our opinion it is very doubtful that a prosecution would lie under the provisions of Act 310 of the Public Acts of 1913. The general disorderly statute, the same being Section 5923 of the Compiled Laws of 1897, provides, in part, as follows: "All persons who run away, or threaten to run away, and leave their wives and children a burden upon the public; all persons who, being of sufficient ability, refuse or neglect to support their families, or who leave their wives and children a burden upon the public, * * * shall be deemed disorderly persons."

We are inclined to the opinion from the facts presented that a prosecution would lie against the husband as a disorderly person under the provisions above quoted. We are inclined to this opinion because we believe that the courts in construing this section would take the position that the duty to support the wife is not only to provide food and shelter, but to provide same in a place where it is possible for the wife to live. We are further of the opinion that the fact that the husband is a minor would not exempt him from liability under this statute. The minor, when married, is emancipated to the extent at least, that he must comply with the law by providing, if able, adequate support for his family.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-pi-O

DRAIN LAW. Drain Commissioner to set date of determination of necessity of drain within 30 days of filing application. May adjourn determination if necessary by giving proper notice to interested parties.

September 29, 1915.

Mr. Frank M. Hall, Prosecuting Attorney, Hillsdale, Michigan:

Dear Sir—I am in receipt of your communication of recent date addressed to the Attorney General requesting an opinion as to chapter 3 of the drain laws, as amended. I note that you specifically request a construction of section 2 of chapter 3 of act 202 of the Public Acts of 1915, in providing that "upon the filing of such application, the county drain commissioner authorized to act thereon, shall within thirty days call a meeting at some place to be designated by said drain commissioner," etc. And further providing that at the time and place fixed in said notice said commissioner shall proceed to determine the necessity of said drain and whether the same is necessary and conducive to public health, convenience and welfare.

It occurs to me that the language employed in said section 2 appears to plainly indicate that the drain commissioner shall act with due despatch after an application has been filed, and that the thirty day clause was inserted for the purpose of securing prompt action by the drain commissioner in determining the necessity for construction, altering or cleaning out all drains, and as to such petitions as have been filed since the act took effect, the thirty day clause would apply. How-

ever, if the drain commissioner is unable to make the determination upon the date originally set for that purpose and within the thirty days after the filing of the application, I am of the opinion that an adjournment of the proceedings could be duly made and entered of record by the commissioner and due notice given to interested parties of the date to which such hearing and determination are adjourned.

Hoping the above suggestions may be of assistance to you in advising your drain commissioner, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

Gr-g-O

JUVENILE COURT LAW. Commitment of dependent and neglected children to state institutions must be accompanied by physician's certificate as to physical condition, if such are the requirements of the law or regulations of such institution. Petition for adjudication of dependency or delinquency may be made by any person having knowledge of the fact.

September 29, 1915.

Mr. Elmer J. Alway, Probate Register, Manistee, Michigan:

Dear Sir—I am in receipt of your communication of the 18th inst. relative to Act No. 6 of the Public Acts of the Extra Session of 1907, known as the juvenile court law in which you request the opinion of this department as to the right of juvenile courts to make an order committing a dependent child to the State Public School at Coldwater without attaching to the commitment a physician's certificate certifying to the physical condition of such dependent child, as required by section 8 of Act 143 of the Public Acts of 1903. Also if a juvenile court has any right to commit a dependent child to the State Public School at Coldwater upon adjudication of the dependency founded on the petition of any person or officer except the poor commissioners of the county.

As to your first proposition, I would respectfully call your attention to section 7 of the juvenile court act as amended by act 228 of the Public Acts of 1913, which provides that when any child under the age of seventeen years shall be found to be a "*dependent or neglected* child within the meaning of this act," the court may make an order committing the child to the care of some suitable state institution "subject to the law and regulations governing such institution," etc. It would follow that if the law and regulations governing the State Public School at Coldwater required a physician's certificate before the reception of the children committed to the institution, such commitment should be accompanied with the required certificate.

Your second proposition, as to whether the court would have authority to commit dependent children to the State Public School at Coldwater on the petition of some person other than a superintendent of the poor or poor commissioner, I would again refer you to section 5 of the juvenile court act, as amended, which appears to authorize the juvenile court to act "upon the filing with the court of a sworn petition setting forth upon knowledge or upon information and belief, the facts showing that any child resident in said county is a delinquent, *dependent or*

neglected child within the meaning of section 1 of this act," etc. It is apparent from the reading of the above that the authority to petition the court to act in cases of alleged dependent or neglected children, is not confined to superintendents of the poor of the county, but may be made by any person having knowledge of the facts constituting dependency or neglect within the meaning of section 1 of the juvenile court law.

I trust that what I have stated above sufficiently covers your inquiry, and I beg to remain,

Very respectfully,
GRANT FELLOWS,
Attorney General.

Gr-g-O

PROSECUTING ATTORNEYS. An assistant appointed by the prosecuting attorney under the direction of the Court, for the trial of a felony case is not entitled to compensation for services rendered in connection therewith previous to such direction to appoint, by the Circuit Judge.

September 29, 1915.

Mr. Herman Dehnke, Prosecuting Attorney, Harrisville, Michigan:

Dear Sir—We are in receipt of yours of the 20th inst. wherein you state:

"I am confronted with a question involving the construction of Howell sec. 1166, relative to assistant prosecuting attorneys and their compensation. I had an assistant in a recent felony case, and the question I am concerned with now is whether or not to O. K. a bill in which he charges the county for 15 days' work in preparing himself on the law and the facts previous to the trial itself, and previous to his assistance in court, but after I had stated to him that I desired his assistance and would ask the court to appoint him at the beginning of the trial. As I read the statute, his bill would have to be confined to services at the trial itself. It seems that this section was enacted as a consequence of a dictum in *Sneed vs. People*, 38 Mich. 248, that case being decided in 1878, and How. 1166 being enacted in 1879, and the intention seems to have been to restrict the prosecuting attorney's power to hire an assistant, or get one appointed, at the expense of the county, to trial work, because the Judge could not certify to anything not done in court. From a notation in Cyc. I am inclined to think that the case of *Green Lake vs. Waupaca Co.* (Wis.), 89 N. W. 549 is somewhat in point, and Words and Phrases, "Trial" would probably throw some light on the question. Please advise me at your early convenience of your opinion on the situation."

In reply you are advised that in our opinion, under the facts presented, the fifteen days' preparation, previous to the trial can not be legally compensated for by the County. Section 1166 Howell's Statutes, second edition, provides: "That the prosecuting attorney may, under the direction of the court, procure such assistance in the trial of any person charged with the crime of felony, etc. * *"

From the facts stated in your communication it appears that the Court did not direct such appointment until the beginning of the trial proper and in our judgment, as before stated, no claim can legally be made for services rendered previous to such time. We are not prepared to say, however, that in all cases compensation can be made only for services rendered in actually trying the case in court. If an appointment is made previous to the trial, then, in our opinion, services performed, in preparation, subsequent to the appointment and previous to the trial of the case, may be paid for by the county upon the certificate of the Circuit Judge.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

HIGHWAYS. Under and by virtue of the terms of Act 48 of 1915, an appeal will lie to the township board from the determination of a highway commissioner in refusing to lay out a public highway.

September 29, 1915.

Mr. Albert W. Black, Prosecuting Attorney, Tawas City, Michigan :

Dear Sir—We are in receipt of yours of the 27th inst. wherein you state that under date of July 31 you wrote this office relative to the right of appeal from the decision of a highway commissioner in refusing to lay out a public highway. In reply, we have no record in this office of ever having received such a communication from you.

In reply to the proposition submitted in said copy, you are advised that previous to the taking effect of Act No. 48 of the Public Acts of 1915, no appeal to the Township Board would lie from the determination of a highway commissioner in refusing to lay out a public highway. This was decided in the case of *Wilson vs. Township Board*, 87 Mich. 240, and the statute there in question remained substantially the same until amended, as before stated, in 1915. You will note from an examination of section 7 of Act 48 of the Public Acts of 1915, that the words "or in his refusal to lay out, alter or discontinue any highway" have been added to those previously in effect with reference to such appeals.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

REFERENDUM. Petitions may not be filed under Section 1, Article V, of the State Constitution for the submission of a measure passed by the legislature, to a vote of the People, after the expiration of ninety days from the date of the Legislative adjournment.

September 30, 1915.

Hon. Coleman C. Vaughan, Secretary of State, Capitol:

Dear Sir—Your letter of recent date in which you request the views of this Department upon a certain question that has arisen under Section 1 of Article V of the Constitution of this State, is at hand. Said section refers to the exercise of the legislative power of the State and reserves to the People the powers of the initiative and referendum. In accordance therewith a measure that is passed by the legislature must be submitted to the electors for approval or rejection if a petition is filed with the Secretary of State within ninety days after the final adjournment of the legislature, signed by a prescribed number of electors, and requesting such submission. It appears that the procedure outlined has been followed with reference to Senate Enrolled Act 93, enacted at the legislative session of 1915. You state that on the 23d day of August, which date was within the ninety day period, petitions were received from Wayne county and were duly filed as required by the constitutional provision. Subsequently, on the 25th day of September, which date was more than ninety days after the adjournment of the legislature, petitions identical in substance were offered for filing as "supplemental petitions." Presumably such action has been taken pursuant to a permissive clause of the section of the Constitution in question which provides that "within forty days from the transmission of the said petition to the Secretary of State a supplemental petition identical with the original as to the body of the petition, but containing supplemental names, may be filed with the County Clerk and such supplemental petition shall be forwarded to the Secretary of State by said clerk within ten days after the filing of the same." In view of this clause the question arises as to whether or not a supplemental petition may be filed after the expiration of the ninety-day period from the time of the legislative adjournment.

I am impressed that the clause above quoted must be construed in connection with the other provisions of the section and particular in connection with the clause referring to the presentation of petitions "within ninety days after the final adjournment of the legislature." It seems to be the obvious intent of all of the provisions referring to the referendum as applied to measures passed by the legislature that the canvassing of the petitions filed is to take place immediately upon the expiration of the indicated period of ninety days, and that it is to be determined then, from such canvass, whether or not the particular measure is to become operative, or is to remain suspended until such time as the electors pass thereon. If the view be adopted that supplemental petitions may be filed after the expiration of ninety days from the date of the final adjournment of the legislature a peculiar situation might easily arise. By way of illustration, it may so happen that the

petitions filed within the period in a particular case will contain an insufficient number of signatures to suspend the operation of the Act. In such event the measure would become operative in the same way as would the other enactments. To permit the filing, subsequently, of additional petitions, supplemental or otherwise, and to give consideration thereto would result in rendering the measure inoperative after it has actually gone into effect. It can, I believe, be scarcely presumed that such a result was contemplated in the framing of the ratification of this constitutional provision. It seems to me, therefore, as above indicated, that the clause with reference to the filing of supplemental petitions must be interpreted in connection with the previous provision requiring the petitions to be presented to the Secretary of State within the prescribed period of ninety days. It would seem rather that the permission to file supplemental petitions is properly to be regarded as nothing more than a permissive modification of the provision which is found in the same paragraph to the effect that all sections of a petition circulated in any county must be filed at the same time. Viewed in this light it certainly can not be said that the ninety-day clause is modified or set aside. In the specific instance to which you refer, therefore, I am impressed that the petitions offered may not properly be accepted for the reason that the time for filing the same has expired.

It appears that the same conclusion must be reached under another aspect of the situation. If I understand your statement correctly, the petitions presented on the 25th of September are identical with those previously filed, and contain the same names. The purpose of such presentation does not appear. However, if the original petitions were, for any reason, invalid and for that reason to be regarded as a nullity the right could scarcely be claimed to file supplemental petitions. It is the intent of the Constitution that petitions of the latter character may be presented only when proper original petitions have been previously filed. Again, if the original petitions in this instance were valid, then the petitions last offered, being a mere duplicate, can not be considered. They would not be within the definition of "supplemental petitions" which are expressed to be petitions containing additional names. Under any aspect of the case, therefore, I believe that these petitions may not properly be filed and may not be considered for any purpose.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

SCHOOL LAW. A dictionary is not a textbook within the meaning of Act 315, of 1913.

September 30, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Capitol:

Dear Sir—You have recently requested the views of this department as to whether or not a dictionary may properly be regarded as a textbook within the meaning of Act 315 of the Public Acts of 1913. The title of the measure referred to is: "An Act to regulate the sale of

school text-books"; and the provisions of the body of the measure are in accord with the general purpose expressed in the title.

Inasmuch as the legislature has not seen fit to define the expression "school textbook" in the Act we must necessarily assume that it is used in its ordinary significance. The commonly accepted meaning of the words used in the Act must, in other words, be adopted. It does not occur to me a dictionary is ordinarily considered to be a school textbook. The term is defined as: "A book to be used as a standard book for a particular branch of study for the use of students." Webster gives substantially the same definition, as follows: "A book for students containing the principles of a science or any branch of learning." It seems apparent that a dictionary can scarcely be regarded as coming within either of these definitions. Such being the case, I am constrained to the opinion that it may not be regarded as within the scope of the title to Act 315 of 1913.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

LIQUOR LAW. A bond may not be cancelled by the county treasurer except for the reasons specified in the statute.

October 1, 1915.

Mr. A. L. Sayles, Prosecuting Attorney, Newberry, Michigan:

Dear Sir—This department is in receipt of your letter of recent date in which you request an opinion upon a certain matter arising under the General Liquor Laws of the State. It appears that in one of the townships in your county a certain liquor license was issued last spring and a bond with individual sureties was presented, approved and filed with the county treasurer. In this bond the sureties made affidavit to the effect that they were the owners of real estate having an assessed valuation of more than three thousand dollars. It appears that in fact the real estate owned by said sureties did not have such assessed value at the time of the execution of the bond and there is some doubt as to whether or not the property listed in the affidavit attached to the bond is worth the penalty therein named. Acting in accordance with the statute, the County Treasurer has required both sureties to appear before him to show cause why the obligation should not be cancelled. Section 8 of the Warner-Cramton law makes provision for a hearing before the county treasurer and authorizes him to require that a new bond shall be furnished, and the existing bond cancelled "in case of the death, insolvency or removal of either of the sureties." In the case stated by you it would appear that both of the sureties are now living, and that neither has removed from the township.

In accordance with the letter of the statute the treasurer is without authority to cancel the bond in question unless the sureties in question, or one of them, can be deemed to be insolvent within the meaning of that term as used in the above cited section of the General Liquor Law. I do not understand from your statement that either is insolvent in the

usual acceptance of the term, and that neither can be deemed to be within the clause of the statute referring to cancellation of the bond unless the fact that neither is the owner of real estate having an assessed valuation of three thousand dollars can be deemed to constitute such condition.

It occurs to me that the word "insolvent" as used in the liquor law must be given its ordinary meaning, and that in accordance with your statement of facts neither surety is to be regarded as coming within such term. Construing the statute as drawn, it seems apparent that the fact that a surety is not the owner of property having an assessed valuation of three thousand dollars over and above all indebtedness and exemptions does not render him insolvent, and does not, in consequence, authorize the county treasurer to cancel the bond. We are, of course, bound to construe the Act as we find it and can not give to the terms used any other or different meaning than the legislature must be presumed to have had in mind and to have intended. The treasurer can not require the giving of a new bond except in the particular instances specified in the statute, that is, in case of death, removal from the township, or actual insolvency on the part of one of the sureties. Had it been the intention of the legislature to permit the cancellation of a bond in case it should be determined by the county treasurer that the surety was at any time during the life of the obligation, not the owner of property having the required assessed valuation equal to the penalty of such obligation, undoubtedly such provision would have been specifically made.

I am impressed that the expression "assessed valuation" as used in section 8 of the liquor law must be deemed to have reference to the value at which the real estate possessed by the sureties is actually assessed. It is of course the intent of the statutes relating to taxation that, as required by the Constitution, the assessed value and the actual value shall be identical. If, therefore, in the instance stated by you neither of the sureties was the owner of real estate, referred to in the affidavit, assessed at more than three thousand dollars, then neither was entitled to be accepted as such surety. It is the duty of each citizen to see to it that his property is assessed at its actual cash value and he may take the steps prescribed by the General Tax Law to insure that it is so assessed. If he voluntarily permits it to be assessed at a less sum he is not in position to complain that the privilege of being a surety on a liquor bond is denied to him. Doubtless the purpose of the legislature in requiring that assessed valuation should be taken as a basis of determining the sufficiency of the sureties was to do away with any uncertainty and confusion that would in all probability arise if less certain terms had been employed. In other words, it was deemed expedient to leave no opportunity for a dispute growing out of alleged differences of opinion as to value.

In accordance with your request, I am sending you herewith copy of letter addressed to this department by Mr. Henry Mark, of McMillan, Michigan. I understand from your statement that Mr. Mark has consented that such copy be sent to you. I am also sending you copy of my reply to him, which went forward on the 29th of April, 1915. You will note therefrom that no opinion whatever was given.

It does not occur to me that the fact that you drafted the bond and

swore the sureties to the affidavits can affect your right or your duty to conduct such prosecution as may be deemed necessary. I do not understand from your statement that you have counseled the parties as to their rights in any way; or in fact that you did more than to prepare the papers at their request.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O
encls.

CORPORATIONS. Organized under Act 171 of 1903 can not issue and sell stock.

October 1, 1915.

Mr. Neil R. Walsh, Attorney-at-Law, Owosso, Michigan:

My Dear Sir—I have before me yours of the 17th ult., addressed to Mr. Fellows, in which you ask the opinion of this department as to whether a corporation organized under Act 171 of the Public Acts of 1903 would have a right to issue and sell certificates of stock in such corporation.

Said Act 171 of 1903 is entitled: "An Act for the incorporation of associations not for pecuniary profit"; and section 1 of the Act provides that any five or more persons desiring to associate themselves for any lawful purpose "other than pecuniary profit" may sign and acknowledge before any person authorized to take acknowledgment of deeds in this State, and record in the office of the Secretary of State and in the office of the clerk of the county in which the headquarters or principal business of the corporation is to be conducted, a certificate in writing stating the name, the name or title by which the corporation is to be known in law, the purpose or purposes for which it is formed, etc."

Section 7 of the Act, as amended, provides that "hereafter all new corporations not organized for profit and having no capital stock, except religious organizations, and institutions of learning provided for in Act 39 of the Public Acts of 1855, and organizations of the Independent Order of Odd Fellows, shall be organized under this Act."

It follows from the language employed in the above quoted section of the Act that one of the essentials of an association organizing under the Act is that such association shall have no capital stock excepting such organizations as are specifically mentioned in said section 7. This feature, together with the title of the Act which plainly indicates that its scope is intended only for such corporations or associations as do not have for their objects or purposes a pecuniary profit to its members, would preclude an issue and sale of stock of any corporation or association organized under the Act.

Hoping I have made myself understood in the matter, and with best personal regards, I am,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

G-pi-O

LEGAL RESIDENCE. Being governed by intent, an adult person may gain a residence entitling them to free hospital treatment under Act 267, of 1915, before gaining a residence under the indigent poor statutes.

October 1, 1915.

Hon. Colonel O. Swayze, Judge of Probate, Flint, Michigan:

My dear Sir—I am in receipt of your communication of the 27th ult., addressed to Mr. Fellows in which you desire the opinion of this department as to the construction to be placed upon Act 267 of the Public Acts of 1915. You state that a person has resided in your county only about seven months and that an application has been filed with you under said Act for free medical and surgical treatment at the University Hospital, said person being an adult. You desire to know whether this person can be sent to the hospital for such treatment at the expense of the county inasmuch as such person has not resided within the county for one year next preceding the application.

You will note that section 1 of the Act provides that “whenever it shall appear to any county agent of the Board of Corrections and Charities, or to any superintendent of any township, or to any superintendent of the poor of any county, that there is any *adult legal resident* of his county afflicted with any malady which can be remedied by proper care and medical or surgical treatment,” etc., it shall be the duty of such agent, superintendent of the poor or physician, to report the same to the proper judge of probate of the county in which such person resides. Notwithstanding the person may not have resided in a county long enough to have gained a residence under the indigent poor statutes, they may have gained a legal residence such as is contemplated by section 1 of the Act. The length of time a person is required to reside in a given county in order to obtain a legal residence in any county is and whether they have or have not a legal residence in any county is largely a question of intent on the part of the person when coming into the county. If a person comes into a county with the intention of permanently residing in said county, and follows up such intention by overt acts consistent with such intent, they may become a legal resident of the county almost immediately upon taking up their domicile in the county with such intent. I am, therefore, of the opinion that if the person of whom you speak came into your county with the intention of permanently residing therein and has followed up those intentions with conduct consistent with a permanent residence therein, you would be warranted in decreeing that such adult person be conveyed to the hospital for care and treatment providing your other findings were sufficient under the statute.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

G-pi-O

SCHOOL LAW. A township school district organized under Act 176 of 1891 must furnish school facilities in any part of the township more than three and less than eight miles from any established school if there are ten children of school age in such territory and the proper petition is presented.

October 2, 1915.

Mr. Charles Olmstead, Supervisor, Garden, Michigan:

Dear Sir—Your letter of the 30th ult. has been received and contents noted. It appears therefrom that your school district is operating under the provisions of Act 176 of the Public Acts of 1891, as amended, which provides for the organization and government of Township School Districts in the Upper Peninsula. I note that in a certain part of the Township several families have settled temporarily. I assume that this community in which these families reside is more than three and less than eight miles from any school house in your district, and also that there are more than ten children of school age now living in such territory. If such is the case, then in accordance with the provisions of the law under which your district is organized, it is the duty of the Board of Education, if petitioned therefor by a majority of the parents or legal guardians of the children concerned, to provide school facilities for these children. This may be done by establishing a so-called sub-district, or by making arrangements for the transportation of the children to some established school. The fact that these people are living in this territory for a limited time only does not alter the situation. It is clearly the intent of the statute that they shall be entitled to reasonable school facilities and the duty is placed upon the Board of Education, to furnish the same. If such a sub-district is established it will not be necessary to maintain the same indefinitely, that is, if the people to whom you refer move away so that less than ten children of school age remain in the territory concerned it will not be necessary to continue such sub-district. Doubtless any contract that you may enter into with a teacher will be made expressly with such contingency in view. The same observation applies to the furnishing of transportation. However, so long as ten children of school age remain in the territory the school should be maintained, or transportation to some other school furnished; and if the proper petition is presented by the parents or legal guardians of the children the duty of the Board of Education is clear.

Respectfully yours,

GRANT FELLOWS,
Attorney General.

Ca-pi-O

DIVORCE—PROSECUTING ATTORNEYS. An indeterminate sentence, the maximum of which is three years or more is grounds for divorce under Sec. 8621 C. L. 1897;

Not prevented from appearing for wife in divorce case after conviction and sentence of husband for three years or more and no appeal taken from such conviction.

October 5, 1915.

Mr. Albert W. Black, Prosecuting Attorney, Tawas City, Michigan:

Dear Sir—I have before me your communication of the 30th ult. in which you ask if a sentence to Marquette prison for a period of not less than one year and not more than three years with a recommendation of two years, is such a sentence as would authorize the granting of a decree to the wife on the ground of “a sentence for three years” within the meaning of the statute authorizing the granting of a divorce where either party has been sentenced to the State prison for a term of three years or more.

You also ask whether you would be prohibited under the statute from representing the wife in a divorce case where the application for divorce is based upon the sentence of the court as above stated, you having prosecuted the husband for the offense for which he was sentenced.

It is provided by section 8621 of the Compiled Laws of 1897 that a divorce from the bonds of matrimony may be decreed by the Circuit Court of the County where the parties, or either of them reside, or by the Court of Chancery, on the application by petition or bill of the aggrieved party, “when one of the parties has been sentenced to imprisonment in any prison, jail or house of correction, for three years or more; and no pardon granted to the party so sentenced, after a divorce for that cause, shall restore such party to his or her conjugal rights.”

Since the enactment of the above mentioned statute the so-called indeterminate sentence law has come into existence so that at the present time few sentences are for a definite period, but are terminated by the action of the State Board of Pardon and Parole, or by a direct pardon from the Executive. However, the indeterminate sentence law still preserves the maximum feature and provides that the maximum sentence prescribed by law shall be the maximum sentence prescribed by the Court, and in considering the question before us we should take into consideration the possibility of the convicted person serving the full maximum term. As a further significance the language providing that “no pardon granted to the party so sentenced after a divorce for that cause shall restore such party to his or her conjugal rights,” would infer that the Legislature contemplated that all convicts might not be required to serve the full maximum term of imprisonment. I am, therefore, impressed that a maximum imprisonment of three years or more under the indeterminate sentence law would be such a sentence as would fall within the purview of subdivision three of section 8621 of the Compiled Laws of 1897 authorizing the granting of a decree of divorce when one of the parties has been sentenced to imprisonment for three years or more.

As to your second inquiry relative to your right to appear for the wife of the person sentenced, I would call your attention to the language em-

played in section 1158 of Howell's Statutes, second edition, in providing that no prosecuting attorney shall be concerned as attorney or counsel for either party other than for the State or County in any civil action depending upon the same state of facts upon which any criminal prosecution commenced or prosecuted shall depend.

I am of the opinion that the intent of this statute was to prohibit the prosecuting attorney from impairing his efficiency as a public prosecutor in the prosecution of pending litigation, by engaging as attorney and counselor for either of the parties in a civil action depending upon the same state of facts upon which, as prosecuting attorney, as he would be required to come into court and ask for a conviction of either of the parties to the civil litigation. Therefore, if the criminal prosecution that resulted in the sentence of this man of whom you speak is at an end and sentence has been pronounced and no appeal taken from the conviction, I know of no authority that would prevent your appearing as solicitor for the wife who desires to institute proceedings for a divorce upon the ground of the sentence.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

G-pi-O

STATUTES. Act No. 247 and Act No. 248 of 1915 do not come under the scope of Sec. 3 of Article XIV of the Constitution.

October 13, 1915.

Emerson R. Boyles, Prosecuting Attorney, Charlotte, Michigan :

Dear Sir—Your communication of the 11th inst. received by this department in which you request an opinion as to whether Act No. 247 and Act No. 248 of the Public Acts of 1915 are now effective and apply to present officials, or whether these two Acts must be construed in connection with Section 3 of Article XIV of the Michigan Constitution of 1909.

As supervisors receive a compensation per diem and Sec. 3, Article XIV of the Constitution refers only to salaries of public officials, these Acts would not come within its scope. It is, therefore, my opinion that Act No. 247 and Act No. 248 of 1915 are now operative, and that Supervisors and other township officers may draw compensation thereunder.

Kindly refer to opinion to Strom under date of April 17, 1913. in which an opinion was given differentiating between compensation and salary.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

M-pi-O

TAXATION—BOARD OF SUPERVISORS. Assessment rolls made by supervisors which include assessment of mineral rights under Act 51 of 1911 should not be changed by the Board of Supervisors, said Board having no power to re-assess or change values on such assessment rolls.

October 14, 1915.

Mr. A. J. Waffan, Prosecuting Attorney, Iron River, Michigan :

Dear Mr. Waffan—I have gone over with you the question which is now pending before your Board of Supervisors with reference to the mineral reserve assessments in your County. As I understand the situation, in some of the townships the supervisors have assessed the mineral rights separately in accordance with the provisions of Act No. 51 of the Public Acts of 1911; in other townships of your County the mineral rights have not been so assessed.

By Act No. 119 of the Public Acts of 1915, Act No. 51 of 1911 was repealed. The repealing Act, however, did not take effect until August 24, 1915. Therefore, the assessment of mineral rights was lawful at the time the assessment roll was made up by the supervisor and was also lawful at the time of the meeting of the Board of Review. Therefore, the roll as made up, which included mineral rights, was a lawful roll. The collection of the taxes levied thereunder, however, was defeated and the right to collect suspended by Act No. 119 of 1915.

Act No. 119 of 1915, in section 2 thereof, provides: "The Auditor General is hereby authorized, empowered and directed to cancel all taxes remaining undischarged as appears from the records of his office, *or that may hereafter be returned to his office* upon the assessment of mineral, coal, etc."

I am impressed that a question of policy is involved in the matter submitted by you as well as a question of law and, after giving the matter full consideration, viewing it from its legal aspect as well as from the standpoint of public policy, I have reached the conclusion, and so advise you, that, in my judgment, the Board of Supervisors should leave all rolls as prepared by the supervisor. I do not believe that the Board of Supervisors has the power to reassess the various descriptions in the townships which have assessed the mineral rights, or to change the valuations on the various descriptions. The fact that the right to collect the taxes on the mineral rights has been suspended by an Act of the Legislature in no wise renders defective or illegal the assessment of the other property. Taxes levied upon other property will be collected, and will be collectible beyond question, and the Auditor General will, at the proper time, cancel the taxes upon the mineral rights.

I therefore advise that no attempt be made by the Board of Supervisors to change the assessment rolls in any particular but that they be left as they are and that at the proper time the assessments under Act No. 51 of 1911 will be canceled by the Auditor General under the power and authority given him by Act No. 119 of the Public Acts of 1915.

Trusting this fully covers the situation, I remain,

Very respectfully,

GRANT FELLOWS,

Attorney General.

F-pi-O

MICHIGAN RAILROAD COMMISSION. Has no authority under Act 175 P. A. 1915 with respect to the opening of streets across railway tracks or acquiring of a right of way for such purpose, but deals only with the proposition from the standpoint of safety of the proposed crossing and the hearing before and order of the Commission should precede proceedings to acquire right of way across the railroad property.

October 18, 1915.

Michigan Railroad Commission, Lansing, Michigan:
Attention Mr. Cunningham.

Gentlemen—We are in receipt of yours of the 5th instant enclosing file with reference to an application made to your commission by Mr. Judson Bradway of Detroit, Michigan, relative to the opening of certain streets crossing the Grand Trunk tracks between the six and seven mile roads north of Highland Park. You state:

“The question is whether we have authority to deal with this matter. Of course, we understand if the streets were opened up we would have authority, in the interest of safety, to order the necessary protection, but whether we would have the authority to order the opening of the several streets as outlined by Judson Bradway Company is a question that we are not quite clear on. Will you kindly give us an opinion that will enable us to take care of all matters similar to this, as well as this case.”

In reply, it appears from the files submitted that the Judson Bradway Company is the owner of a certain tract of land in this vicinity and adjacent to the Grand Trunk right of way. It is further apparent that the street or streets in question have never been regularly opened across the Grand Trunk property. Section 27 of Act 175 of the Public Acts of 1915 provides in part as follows:

“Before laying out any highway under the provisions of this act where the same crosses the track and right of way of any railroad company, steam or electric, application shall be made to the Michigan Railroad Commission for permission to make such crossing and thereupon it shall be the duty of said commission to make such examination of the location of such proposed crossing as it may deem necessary. At such examination the railroad company and the township, good roads district or county interested shall be entitled to be heard after the service of proper notice upon them by the Michigan Railroad Commission. * * * If the location of the proposed crossing is found, upon said examination and hearing, to be feasible and reasonably safe for a crossing at grade, it shall be the duty of said commission to grant permission for such crossing to the highway officials making such application and issue specifications for same, which shall include approaches. * * * If permission be granted for such crossing, either at grade or otherwise, the same proceedings in relation to the acquiring of rights of way for such highway across the land of said railroad

company including the right of way across the tracks shall be had as in other cases. * * *

From the above it is apparent that the proceedings before the Michigan Railroad Commission is intended to be preliminary to the acquiring of a right of way across the railroad property and that the commission have no jurisdiction with respect to the acquiring of such right of way. In other words, the statute empowers the commission to deal with the proposition from the standpoint of safety and does not confer upon the Commission any rights as between the petitioner and the railroad company with respect to the property interests to be acquired. The proper procedure in all such cases, in our judgment, should be an application by the proper highway officials to the Railroad Commission, and a hearing and order by the Commission upon such application. If then the application for crossing is granted together with the specifications for the same, proceedings in the regular way should be taken by said highway officials for the purpose of acquiring a right of way across said tracks in conformity with said specifications provided by the Commission.

I am enclosing herewith files submitted.

Trusting this sufficiently answers your inquiry, I am,

Very respectfully,

GRANT FELLOWS,

Attorney General.

Cr-v-O

MICHIGAN RAILROAD COMMISSION. Has no authority to order the opening of Meade Street across the Grand Trunk right of way in the City of St. Johns.

October 18, 1915.

Michigan Railroad Commission, Lansing, Michigan:
Attention Mr. Cunningham.

Gentlemen—We are in receipt of yours of the 5th instant enclosing your file with reference to Meade Street in the City of St. Johns, Michigan. It appears from an examination of the file that a controversy has arisen between the authorities of the City of St. Johns and the Grand Trunk Railway Company with respect to a crossing of said railway at Meade Street in said city. The city authorities contend that Meade has been legally opened across the railroad right of way of said company and the Grand Trunk contend to the contrary. You request our opinion as to whether it is within the jurisdiction of your Commission to order that the said street be opened, if, after hearing, the same is deemed proper.

In reply you are advised that your Commission has no jurisdiction to order the opening of a street, crossing railroad right of way. Under the provisions of Act 175 of the Public Acts of 1915, your Commission has certain jurisdiction with respect to the extending of streets and highways across a railroad right of way. This jurisdiction, however, deals only with the subject-matter from the standpoint of safety and does not confer upon your Commission any authority with respect to property rights as between the municipality and the railway commission.

After a hearing before your Commission under the provisions of this section and after an order has been made with respect thereto, it is then incumbent upon the city highway authorities to proceed in the regular way for the acquiring of a right of way across the railroad property, and this, as before stated, is a matter with which your Commission is not concerned.

The files are returned herewith.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Cr-v-O

LOCAL OPTION LAW. Separate petitions circulated in a township, ward or election district sworn to by different persons and then joined together and filed is not a compliance with the local option law, and if the same is apparent upon the face of the returns, the same cannot be considered by the board of supervisors. (2) Where a local option petition from a township, ward or election district is filed on the 9th day of October, and an affidavit shows that such petition was posted on the 29th of September, same cannot be considered for the reason that ten full days must elapse between the date of posting and the date of filing.

October 18, 1915.

Mr. Prentiss M. Brown, Prosecuting Attorney, St. Ignace, Michigan:

Dear Sir—We are in receipt of yours of the 16th instant, wherein you state:

“Petitions for the submission of the local option question are before the Board of Supervisors of Mackinac county. Two questions as to the legality of the petitions are before the board. They have been referred to me for an opinion. I rendered an opinion which is dissented from by interested persons. At their request I write you. Our board will consider the matter Tuesday October 19th. If possible would you render an opinion so that it would reach me by Tuesday, or if not, wire me as to when you could reply. I hold a telegram from your Mr. Dougherty, but I am not sure my telegram to him clearly outlined the situation.

The first proposition is this. In several townships, which are single election districts, this is undivided for election purposes, petitions have been filed to which the facts I state apply. Two sheets of paper at the tops of which appear the petitioning words, have been pasted or clamped together, one resident elector by his affidavit swears that the signers are qualified electors, reside in the township, that he is acquainted with them, etc., as to one of the two sheets, another makes the same affidavit as to the other sheet. A third person swears that an exact copy of the entire petition, that is of the two sheets as attached together were posted in three of the most conspicuous places, etc. Only one petition is filed, but it is composed of two sheets as described with

two or three affidavits. In short, one man swears to the signatures of one portion of the names, another as to the balance of the names, and a third as to the posting. In some cases, one man swears to the names in part, and also as to posting, another swearing to the balance of the names.

When the committee asked my advice I examined the statute and thought the petitions sufficient, basing my opinion on this language in section four of the law (P. A., 1889, No. 207, as amended.) 'It is hereby required that the signatures of all of the petitioners residing in any one and the same township, etc., * * * * * shall be attached to one petition or list, separate from any other township * * * and that an exact copy * * * * * be posted * * *.' All of the names were attached to one list and posted. This I held to be a compliance with the statute. In my judgment the statute does not object to separate circulation, but does not insist that all be attached to or in one list so posted so that the voter may ascertain whether his name has been wrongfully placed thereon, by examination of any one of the three copies. If two separate petitions were posted he would be forced to examine more than one.

The second proposition relates to the time of posting. Several affidavits were sworn to on the 9th day of October, having been posted on the 29th of September. Following the rule that the board could not go back of the face of the petitions, I held that if the deponent's statement, that it was up ten days could be true, it was sufficient. It was obvious that it would be true, as the posting might have taken place the first instant of the first day, and if so it was up ten full days. I also applied the general rule of excluding one day and including one day, there being eleven days counting both the first and last. An examination of 160 Mich. 35 (Crawford vs. Supervisors), indicated to me that the Supreme Court held " * * * that the posting occurred at least ten days prior * * *" which would I think include the first day.

I have rendered an opinion to the committee appointed by the board to inquire into the legality of the petitions, in conformity with the attitude I indicate. I will appreciate it if you will aid me by an opinion from your department. If you cannot reply Monday, wire me and the consideration could be delayed for a day or two."

In reply, to the first question submitted, it is the ruling of this department that only one petition may be circulated in any township, ward or election district, and that the circulation of more than one petition even though they be subsequently joined together, and as joined, filed and posted, renders same illegal and they cannot be accepted by the board if the fact of separate circulation is apparent upon their face as filed. If, however, such determination could not be made from the face of the petitions, the board would not be authorized to take testimony with reference to the same but must presume the petition is valid.

With reference to the second proposition, it appears from your communication that several affidavits were sworn to on the 9th day of

October, reciting posting on the 29th of September. We assume from the above that such petitions were filed with the county clerk on the same day that the affidavits were made, namely Nov. 9th. It is the ruling of this department that such petitions, and lists, should not be considered for the reason that ten full days must elapse between date of posting and the date of filing. Consequently, if the petitions in question were posted, as you suggest, the first instant of the 29th day of September, ten full days would not elapse between that time and the date of filing, and such defect appearing from the face of the records as filed with the county clerk would invalidate the petitions in question.

Very respectfully,

GRANT FELLOWS,

Attorney General.

Cr-v-O

LOCAL OPTION LAW—POSTING OF NAMES—COMPUTATION OF TIME. Ten full days must intervene between the date of posting of copy of signatures to local option petition and the date of the presentation of the original petition to the County Clerk.

October 18, 1915.

Mr. Wirt Barnhart, Prosecuting Attorney, Gaylord, Michigan:

Dear Sir—You have recently requested an opinion from this department relative to section 5415 of the Compiled Laws of 1897, as amended, same being section 5020 of Howell's Michigan Statutes, second edition, which provides for the posting and filing of the signatures to petitions praying for an election on the question of local option. You specifically request an opinion as to whether ten full days should intervene between the date of posting of a copy of the signatures to the petitions and the date of the presentation of said petitions to the county clerk for recording. The section under consideration provides, in part, as follows:

"Sec. 4. To enable the county clerk to ascertain that the petitioners thus praying for such election are qualified electors of such county, and that they constitute at least one-fourth of all the electors of such county, as shown by the poll list or the returns and canvass of the last preceding general election. To enable each and every elector to determine for himself if his name has been fraudulently attached to said petition, it is hereby required that the signatures of all the petitioners residing in any one and the same township, ward or election district, shall be attached to one petition or list, separate from those of any other township, ward or election district, and that an exact copy of said petition and of all the signatures thereto shall be posted in three of the most conspicuous places in the said township, ward or election district for at least ten days *immediately prior to its presentation to the county clerk.*"

The rule for computing this time intervening two dates, in this State, prior to the decision in *Chaddick vs. Berry*, reported in 193 Michigan 542, seems to have been in apparent confusion, due largely to the failure

to give proper consideration to the language employed in the several statutes specifically prescribing and limiting certain periods of time. But in the case of *Chaddick vs. Berry*, the Court attempts to distinguish between statutes which require a certain act to be done a certain number of days before another act mentioned, and those statutes requiring a certain act to be done before a certain day or date mentioned, and having before it for consideration the computation of time intervening between the date of service and the date of return of a Justice Court summons, the court held that the date of the return of the summons was to be included in the computation of the six days time intervening between service and "time of appearance mentioned therein," and on page 546 of the opinion Mr. Justice Long, speaking for the Court, says as follows:

"We have examined the cases with considerable care, in order to deduce the proper rule of construction of *this* statute, so that in the future it can not be said that there is confusion in the cases; and the rule hereafter must be adhered to *under this statute*, excluding the date of service and including the return day in the computation of time."

While *Chaddick vs. Berry* is a later case, the case of *Griffin vs. Forrest*, reported in 49 Michigan, page 309, must not be ignored in this connection, as the *Chaddick* case was dealing with a statute which required an act to be done by the officer serving the writ, a certain number of days before "the time of appearance" of the defendant, which under the statute would be at a certain hour of the day mentioned for his appearance. In the case of *Griffin vs. Forrest*, Mr. Justice Cooley, speaking for the Court, on the question of time within which a renewal of a chattel mortgage might be filed under the Michigan statute providing that a chattel mortgage shall cease to be valid after the expiration of one year unless "within thirty days next preceding, an affidavit of renewal shall be filed," etc., lays down the rule, on pages 311 and 312 of the opinion, in language as follows:

"It is next said that it was not shown that the affidavit was made and annexed to the mortgage in due season. There was no showing at what time in the day it was made and annexed, and it might have been later in the day than the time of filing the mortgage a year before. If so, it is said it was not within the year, and therefore was too late. The force of this objection must depend upon the proper construction of the statute. If fractions of a day are to be regarded, in the filing of chattel mortgages, and if it is the official duty of the clerk to note the hours when he receives a paper, the defendants are right in their position, and the plaintiff's title must fail. But the statute does not in terms require this; it speaks of the *time* when papers are filed and in general the law regards a day as an entirety, and takes no note of fractions of a day. One very good reason for this is that it best accords with the common understanding and is least likely to lead to mistakes in the application of statutory provisions. If a man is given a certain number of days after an event in which

to perform an act or claim a right, he is likely to understand that he is allowed so many full days, and would be surprised if told that the fragment of the day on which the event took place was to be taken into account against him. Another reason is that an inquiry into the actual hour and minute when an act is done is likely to be unsatisfactory and to lead to uncertain results and it is undesirable that rights should depend upon such uncertainties."

The opinion in *Chaddick vs. Berry* refers with approval to the cases of *Platt vs. Highway Commissioners*, 38 Mich. 247; *Coquard vs. Boehmer*, 81 Mich. 445; *Cox vs. Commissioner*, 83 Mich. 193, in which said cases it was held that in proceedings to lay out highways, the statute requiring that notice of a meeting to determine the necessity of a highway must be served "at least ten days before the time of said meeting," required ten full days.

A review of the decisions of the court of last resort in this State upon the question before us would reveal that the rule of computation of time between a given date and another date, during which interim a man is given a certain number of days in which to perform an act or claim a right, is that he is entitled to the specified number of full and complete days in which to perform that act or to claim that right.

Before proceeding further with the question before us, let us consider the object of the statute under consideration. The object seems to be emphatically expressed in the language employed, that is to say, "to enable each and every elector to determine for himself if his name has been fraudulently attached to said petition, * * * * and that an exact copy of this petition and of all the signatures thereto shall be posted in three of the most conspicuous places in said township, ward or election district for at least ten days immediately prior to its presentation to the county clerk."

This statute contemplates that an exact copy of all the signatures to the petition shall be posted in three conspicuous places within the precinct, *and to remain posted* for a specified length of time to enable "each and every elector" to determine for himself whether there has been a fraud perpetuated. In other words, the object of the statute is to designate a certain length of time for the discovery of fraud and to enable each and every elector to ascertain whether their names have been used for the purpose of bringing about such fraud, and to the end that those guilty thereof may be brought to justice with the ultimate view of protecting the electorate against a repetition of such fraudulent acts leading to the defeat of honesty. And as this section is the only protection given to the electors, both individually and collectively, against the fraudulent use of their names upon petitions of this character, and, as before stated, the object of the law being to prevent fraud and to secure honesty by giving "each and every elector" residing within the precinct an opportunity to detect and report a fraud, I am of the opinion that "each and every elector, residing within the precinct would be entitled to the full length of time prescribed against the intrusion of fraud and deception. No specific hour is prescribed by statute for the filing of the petition with the county clerk, neither is there any specific hour of the

day mentioned for the posting of the names on the petition, yet the statute specifically requires a posting of the names for at least ten days immediately prior to the presentation of this petition to the county clerk for record, and I am, therefore, forced to conclude that under the circumstances and within the objects expressed in the section, at least ten full days should intervene between the date of posting of the names and the date of presenting the same to the county clerk in order that "each and every elector" may have an opportunity to discover whether a fraud has been perpetrated in the use of his name upon a petition of this character.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

G-pi-O

CONTEMPT. Costs incurred in instituting proceedings to enforce payment of alimony should be paid by the litigants rather than by the county.

October 19, 1915.

Mr. Louis H. Osterhous, Prosecuting Attorney, Grand Haven, Michigan :

Dear Sir—Section 10891 of the Compiled Laws of 1897, as amended by Act 230 of the Public Acts of 1899, makes provision for the punishment through contempt proceedings of one who refuses to comply with an order of the court directing payment of alimony, when such order has been made in a divorce proceeding. It appears from your letter of the 16th instant that some question has arisen in your county as to the payment of the costs of a contempt proceeding instituted for the purpose indicated under this section. You have asked that I give you my views upon the matter.

The statutory provision referred to is found in the first section of Chapter 301 of the Compiled Laws of 1897, which chapter refers to "proceedings as for contempts to enforce civil remedies and to protect the rights of parties in civil actions." We thus have a legislative declaration that the primary purpose of the provision relating to the institution of contempt proceedings in the event of non-payment of alimony was to provide a remedy by which the right of a party to litigation might be enforced. The proceeding is to be regarded, therefore, as a civil matter and the manner of the payment of expenses incurred in connection therewith is to be determined accordingly. The Supreme Court in the case of *Judd vs. Judd*, 125 Mich. 228, in which the amendment of 1899 was under consideration, discussed the questions involved upon this theory, that the proceeding cannot be regarded in any way as a criminal one would seem to be settled by the case of *In re Emery*, 149 Mich. 383, and previous decisions therein referred to. I wish to call your attention also to *Mayer vs. Mayer*, 154 Mich 386 and *Lake vs. Houghton* Circuit Judge, 172 Mich. 660. These decisions would seem to leave no chance for question as to the precise nature of the proceeding.

The remedy being regarded as a civil one and prescribed by the legis-

lature for the benefit of parties in civil actions, it must follow as a matter of necessary inference, in my opinion, that costs incurred in connection with the institution thereof, should be paid by the parties concerned rather than by the county. In other words, the general rule that obtains in civil proceedings must be applied. While this may seem to result in a hardship in particular instances, it does not occur to me that the conclusion suggested can be avoided. Quite possibly the same objection may be raised with reference to the payment of costs by litigants in other civil proceedings, but there can be no question as to the rule of law.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

APPEALS FROM THE DECISION OF THE COMMISSIONERS ON CLAIMS. Not covered by section 1 of Act 267 of 1911 as to fees.

October 20, 1915.

Hon. Roy M. Watkins, Widdicomb Building, Grand Rapids, Mich.:

Dear Sir—I have before me your communication of recent date in which you ask what fee should be paid the county clerk, if any, on an appeal to the circuit court from a decision of the commissioners on claims, and you specifically ask whether or not section 1 of Act 267 of the Public Acts of 1911 applies in such cases.

Section 1 of Act 627 of 1911 seems to prescribe the fees of clerks of courts and registers in chancery so far as they apply to certain causes of action, and section 1 provides that "before any suit at law or chancery shall be commenced in any circuit court or in the superior court of Grand Rapids, or before the filing of any application for a writ of mandamus, prohibition, quo warranto, habeas corpus, or other extraordinary writ, there shall be paid to the clerk or register of said court by moving party the sum of \$3.00." The remaining sections of the act prescribe certain fees for entering final decree, judgment, orders of court and for the filing of certain papers. Section 10 of the act specifically repeals all acts or parts of acts contravening the provisions of this act. Section 1 of Act 267, above quoted, prescribes the fee to be paid by the moving party in suits at law or in chancery, *commenced in any circuit court or in the superior court of Grand Rapids*, or before the filing of any application for any of the writs specifically mentioned therein. An appeal from an order of the commissioners on claims to the circuit court would not, in my opinion, be considered "a suit at law commenced in the circuit court," and therefore would not come under the provisions of section 1, but would be covered by section 215 of the laws of 1897 covering the fees of clerks of the courts.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

DRUGGISTS. No license required in the sale of alcohol as a component part of a compound medicine.

October 20, 1915.

Mr. William C. Mosier, Paw Paw, Mich.:

Dear Sir—I am in receipt of your communication of the 11th instant in which you state that you are running what is known as a “dry” drug store, that is to say, you have taken out no druggist’s license for the sale of spirituous and intoxicating liquors. You ask whether under the law you may use alcohol in the preparation of liniments or other liquids intended for external application. Also whether or not you can fill prescriptions which call for alcohol as one of the ingredients, but which said prescription when compounded would be unfit or dangerous for internal use.

Replying to your inquiry would state that the law requiring a druggist to take out a license for the sale of spirituous and intoxicating liquors was intended to apply only to such spirituous and intoxicating liquors as are commonly used for beverages and no license is required of a druggist who sells alcohol only as a component part of a compound and in such a form and mixture as to render the same unfit for internal use.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

COUNTY SINKING FUND. Not to be created in absence of existing indebtedness of the county.

October 20, 1915.

Mr. William J. Branstrom, Prosecuting Attorney, Fremont, Michigan:

Dear Sir—I have before me your communication of recent date in which you ask if a board of supervisors by adopting Act 42 of the Public Acts of 1913 may lawfully create a Board of County Sinking Fund Commissioners, there being no bonded indebtedness outstanding against the county, nor is the county otherwise indebted, the only purpose of such board being to raise a sum of money each year to be placed in the sinking fund until such time as the county decides to use such fund for improvements.

The object of Act 42 of the Public Acts of 1913 appears to be quite strongly expressed in the language employed in section 2 of the act wherein it is provided that “the said board of sinking fund commissioners shall from time to time upon the best terms it can make, purchase or pay the outstanding bonded debt of the county, or such part thereof as it may be able to purchase or pay until the full amount thereof be fully purchased or paid. Whenever it cannot be arranged for the purchasing or paying of said debt, or any part thereof, it shall temporarily and until it can so arrange, invest the moneys belonging to the sinking fund in such interest bearing securities as it may deem advisable; * * *”

I am, therefore, of the opinion that it was not the intention of the legislature in the passage of this act to provide for the creation of a sinking fund to accumulate from year to year from a tax imposed upon taxpayers of the county, in the absence of an existing indebtedness for the payment of which such sinking fund could be applied from year to year, or as soon as arrangements for payment could be negotiated.

Very respectfully,

GRANT FELLOWS,
Attorney General.

G-v-O

CONSTRUCTION OF NEW BRIDGES. Necessitated by a widening of a drain at its intersection with highway to be made part of cost of drain.

October 20, 1915.

Mr. Henry G. Reek, Prosecuting Attorney, Ludington, Mich.:

Dear Sir—I have before me your communication of the 12th instant in which you state that the county drain commissioner in your county by proper proceedings recently widened and deepened a certain drain making it necessary to place a new bridge across such drain at the intersection of such drain with the public highway. You desire to know whether the township is compelled to construct the bridge or whether it is to be constructed by the drain commissioner as part of the expense of such drain.

In this connection permit me to refer you to section 29 of the general revision of the drain laws for the year 1913, same being section 4337 of the Compiled Laws of 1897, as amended, which provides that when any drain crosses a highway, the cost of constructing the necessary bridge or culvert shall be charged in the first instance as a part of the cost of construction of such drain after which such bridge or culvert shall be maintained as part of the highway. Accordingly I am of the opinion that in the processes of cleaning out or improving a drain, it is widened so as to make it necessary to construct new bridges across such drain at its intersections with public highways, such new bridges should be constructed in the first instance as a part of the cost of cleaning out or improving such drain, after which they should be maintained by the townships in which they are located.

Very respectfully,

GRANT FELLOWS,
Attorney General.

G-v-O

LOCAL OPTION LAW. Where petitions have been presented to the county clerk with invalid affidavits such filing is to be regarded as a nullity and the petitions may be returned by the clerk to the parties placing same in his possession.

October 20, 1915.

Mr. William C. Brown, Prosecuting Attorney, Lansing, Michigan:

Dear Sir—I have before me your letter of this day in which you request my opinion upon a certain situation that has arisen in Ingham

County in connection with the administration of the provisions of the local option law. It appears that petitions have been tendered to the county clerk for presentation to the board of supervisors praying for the submission of the question of adopting the provisions of said law, but that the affidavits required by the statute to be presented were invalid because prematurely made. The parties who delivered the petitions to the county clerk have requested that they be returned to them in order that new affidavits may be made out in compliance with the statute and attached thereto. The question has arisen as to whether or not the clerk may properly return such petitions for the purpose indicated.

It is specifically provided in section 4 of the local option law that every petition filed by the clerk shall be accompanied by an affidavit or affidavits which shall set forth that the petitions have been properly posted for the required period of time. I understand from your statement that the affidavits that were tendered with the petitions now in the possession of the county clerk indicated in themselves that they were not in compliance with the statute. Such being the case, it occurs to me that the county clerk would have been within his legal right had he refused to accept the same. The fact that they were left in his possession and care cannot, as I view it, alter the legal aspect of the matter. In other words, the affidavits presented can be regarded in no way other than nullities, and therefore, in contemplation of law, there was no filing of the petitions within the meaning of the statute. The taking possession thereof by the county clerk must be regarded precisely as though they had been entrusted to his custody without any affidavits whatever.

It would seem to follow as a matter of logical inference that, inasmuch as the clerk might have refused to accept the petitions when tendered to him he may now return the same to the parties who placed them in his possession. Such action must, of course, be based upon the theory that all that has been done thus far with reference to the attempted filing is so irregular as to be null and void. It does not occur to me that any tenable legal objection can be urged against the return of such petitions, the attaching thereto of proper affidavits that shall comply with the express provisions of the statute, and the subsequent filing thereof. It is, of course, the avowed purpose of the local option law to permit the electors of the county to express their will upon the adoption or rejection thereof when a sufficient number of such electors express their desire in the prescribed manner for the submission of the question. Any conclusion other than as above suggested must lead to the result that the request of the petitions shall be denied because of an oversight on the part of those who presented the petitions to the county clerk without seeing to it that proper affidavits accompanied the same. It can, I believe, be scarcely presumed that it was the intention of the legislature to require that a defect of this kind should be irremediable. I am impressed, therefore, that the county clerk may properly grant the request that has been made and return the petitions referred to in your letter to the parties who gave the same into his possession.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

G-v-O

MOTOR VEHICLE LAW. Conviction under a local ordinance need not be certified to the Secretary of State under Act 302, P. A. 1915.

October 20, 1915.

Hon. Martin B. Stadtmiller, Municipal Court Justice, Ypsilanti, Michigan:

Dear Sir—Your letter of the 19th instant requesting my views with reference to a certain proposition that arises under the provisions of Act 302 of the Public Acts of 1915 is at hand. Section 33 of said act provides for the certifying to the Secretary of State of the conviction of any person "for a violation of any of the provisions of this act" by the magistrate before whom such conviction is had. I understand that you hold the office of Justice in the City of Ypsilanti under the municipal charter. The precise point at issue is as to whether or not convictions for violation of city ordinances regulating the speed of motor vehicles should be certified by you to the State Department.

It will be noted that the act in question requires that convictions for violations of the act itself shall be certified as suggested. There is no clause in the statute to which my attention is called that can be taken to imply a requirement that convictions under local ordinances shall also be certified to the Secretary of State. Reference to section 23 of the act shows that the legislature had in mind the matter of local ordinances and contemplated that municipalities would enact such. If it had been the intention to require that convictions under such ordinances for violation thereof should be certified, I think we may assume that provisions to that effect would have been incorporated in the act. As a municipal justice you have, of course, authority to try cases of alleged violation of the act itself. In the event of a conviction from such prosecution the fact should be certified to the Secretary of State as required. If, however, the prosecution is not under State law, but under local ordinance, then as suggested, I am impressed that such certification is not required.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. The Board of Supervisors under Sec. 20, Chapter IV, may not disregard wholly the determination of the Board of County Road Commissioners, and may not add new items thereto or increase particular items.

October 20, 1915.

Harris E. Galpin, Prosecuting Attorney, Muskegon, Michigan:

Dear Sir—You have recently requested that I give you my views with reference to the construction to be placed on certain provisions of section 20 of Chapter IV of the General Highway Law, as amended. The specific clause that is primarily involved in your inquiry deals with the action of the Board of Supervisors with reference to the determination of the Board of County Road Commissioners as to the amount of money to be raised for highway purposes, and provides as follows:

"If the determination of the Board of County Road Commissioners shall not meet with the approval of a majority of the Board of Supervisors then the said Board of Supervisors shall proceed to decide upon the amount of tax to be raised for such year in such county for the purposes aforesaid, and may allow or reject in whole or in part any or all of the items for sections of roads thus submitted for its construction * * *."

It appears that the question has arisen in your County as to whether or not the Board of Supervisors may, in passing upon the determination of the Board of County Road Commissioners, add items thereto or increase particular items.

The road commissioners are expressly required to specify and itemize the particular roads and parts of roads upon which money to be raised shall be expended. Such estimates are made after due investigation and preliminary survey. It does not occur to me that it was the intention of the Legislature in the enactment of the clause above quoted to permit the Board of Supervisors to, in practical effect, treat the determination of the road commissioners as a nullity and proceed to make entirely new estimates. The logical construction would seem to be to regard the provision permitting the allowance or rejection in whole or in part of specific items as exclusive; in other words, as restricting the power of the Board of Supervisors to a consideration of the specific items set forth in the determination of the road commissioners. Accordingly, the statute can not be regarded as granting to the supervisors the power to add new items to the determination of the Board of County Road Commissioners; nor as granting authority to add to specific items. The definite terms used in the clause in question must, I believe, be viewed as limiting and qualifying the general expression as to the power of the Board of Supervisors. So regarded, the conclusion is unavoidable that it was the legislative intent to allow the Board of Supervisors to reject wholly any or all items, but not to add new items. Likewise, a particular item may be reduced because the statute expressly provides therefor, but may not be increased above the estimate of the road commissioners for the converse reason, that is, the statute does not provide therefor. We may assume, I believe, that if the Legislature has intended to invest the Board of Supervisors with absolute and unlimited power with reference to the determination of the Board of Road Commissioners, such intention would have been clearly expressed. Certainly words that can be regarded only as restricting the authority of the Board would not have been incorporated in the section. It is, I believe, a general rule of statutory construction that specific terms of this character are to be regarded as indicating a restriction of authority conferred. The application of this rule to the case that you have suggested necessarily leads us to the conclusion indicated. The authority to raise money for highway purposes must be exercised in accordance with the expressed provisions of the statute relating thereto, and both the Board of County Road Commissioners and the Board of Supervisors have powers and duties to perform. Each Board must, however, observe the authority that is conferred upon the other, otherwise the manifest purpose of certain provisions of the law will be disregarded. It certainly can not be presumed that the law making body contemplated in the enactment of

this measure that the determination of the Board of County Road Commissioners, carefully prepared in the prescribed manner might be wholly disregarded. Rather I am impressed that it may be altered only as permitted by the terms of the statute and subject to the limitations above suggested.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

AGRICULTURAL AGENT. Cannot be appointed under Act 3 of the Public Acts of 1912.

October 22, 1915.

Mr. Edward W. Fehling, Prosecuting Attorney, St. Johns, Michigan :

Dear Sir—Act No. 19 of 1915, which amends the State Live Stock Sanitary Commission act makes provision for a Live Stock Sanitary Agent in each county. The manner of the appointment of such agent is prescribed, subject however, to the proviso that if a county has an agricultural agent or farm commissioner, such agent or commissioner shall assume the duties of the Live Stock Sanitary Agent. Specific reference is made in this proviso to Act 67 of the Public Acts of 1913 and a general reference to “any similar act heretofore or hereafter passed by the legislature.” It has heretofore been the holding of this Department that Act 3 of the Public Acts of 1912, Second Extra Session, may be invoked to authorize the raising of money for any purpose that shall legitimately tend to encourage improved methods of farm management, and that under said act the board of supervisors may employ some person to give demonstrations and practical instruction in methods of farming. The question now arises as to whether or not a person employed for such purpose under the act of 1912 can be regarded as an “County Agricultural Agent or Farm Commissioner” as such terms are used in the proviso referred to in section 28 of the Live Stock Sanitary Commission Act. Upon this proposition, you have asked that this Department give you its views.

It does not occur to me that an instructor or demonstrator employed with funds raised pursuant to Act 3 of 1912 can be regarded as an Agricultural Agent or Farm Commissioner. The appointment of such official is provided for in Act 67 of 1913 in case the electors of the county upon the submission of the question thereto decide affirmatively. There is nothing in the last mentioned act to indicate that the legislature intended to supersede, repeal or modify the provisions of the enactment of 1912. Apparently it was the legislative assumption that the earlier act did not contemplate the establishment of the office of Farm Commissioner or Agricultural Agent. As matters now stand, I do not think that any general act other than Act 67 of 1913 can be regarded as making provision for such office. Unless, therefore, the electors of the county have adopted the provisions of Act 67, the agent of the State Live Stock Sanitary Commission must be appointed as prescribed in Act 19 of 1915. It is quite probable that the legislature in incorporating the general reference to “any similar act heretofore or hereafter passed” in the pro-

viso in section 28 of said act merely intended to prevent any possible complications arising out of the existence of local acts, or out of the passage of pending, or subsequently introduced, measures.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

RESIDENCE. Considered with reference to right to be registered as a Michigan student at the Michigan College of Mines.

October 25, 1915.

F. W. McNair, Secretary, Michigan College of Mines, Houghton Michigan:

Dear Sir—We are in receipt of your communication of the 6th inst. wherein you state that Mr. George W. Koronski entered the Michigan College of Mines in the fall of 1911 and registered from Narberth, Pa., which is the home of his sister, he having had no home since 1909. In May, 1914, he withdrew from College and since that time has worked as an engineer in the Copper country and during the past seven months has been in charge of two Episcopal Missions in Vulcan and Norway, Michigan, and has not been out of the State since 1911 except on brief vacations. The question has now arisen as to whether Mr. Koronski is entitled to register as a student of the Michigan College of Mines.

It has been repeatedly held that the question of residence is primarily a question of intent and if it is the intention of a person to abandon his residence at one place and acquire a residence at some other, the act of removal coupled with the intention of abandoning his old residence is sufficient. It has been held by the Supreme Court of this State, in the case of *People vs. Osborn*, 170 Mich. 143, that while a student at a college will not be deemed to have lost or acquired a residence during his attendance there, under Constitution Art 3, Section 2, a person having no other domicile may, in good faith, become a resident of the city in which such college is situated, entering the institution as a citizen thereof.

I am, therefore, of the opinion that if Mr. Koronski continued to reside in this State after leaving College with the intention of becoming a resident of Michigan, he is now entitled to enter the Michigan College of Mines as a resident student.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

R-pi-O

SHERIFFS' FEES. Under Sec. 12006 C. L. 1897 a sheriff is not entitled to the fee of thirty-five cents except on the first commitment or final discharge of the prisoner.

October 26, 1915.

Glen Smith, Prosecuting Attorney, Grayling, Michigan:

Dear Sir—Section 12006 of the Compiled Laws of 1897 makes provision for the fees to which sheriffs shall be entitled in particular cases. Among other provisions, it is declared that he shall receive "for every person committed to jail, thirty-five cents; for every person discharged from jail, thirty-five cents." The question arises as to whether or not this section authorizes the payment of fees in any case where a prisoner has been committed to jail awaiting trial in circuit court and after trial is discharged or sent to prison. You have requested that I give you my views upon this proposition.

It occurs to me that the holding of the Supreme Court, in *Lee vs. Supervisors*, 68 Mich. 330, must be regarded as controlling upon this proposition. Commenting on the clauses of the statute above quoted, the court said:

"The statute seems to us too plain for discussion. The terms "committed" and "discharged" are words of recognized legal meaning, and refer only to the beginning and end of the term of imprisonment. Between those periods the prisoner, unless he escapes, is in continuous custody; and whether in jail, or out of jail in charge of an officer, his going through the prison door in either direction is no more an interruption of his imprisonment than going into the prison yard, and retiring from the common room to his cell.

The language speaks for itself, and cannot have any double meaning, or be warped by any supposed meagerness of the sheriff's compensation. The supervisors have a considerable discretion in giving pay for services on which the law is silent. The statute gives them this discretion; and they, and not this Court, must exercise it if a proper case in their judgment arises. How. Stat. Sec. 9055. But, when they do it, they should act upon it as it is, and not be asked to cover it up under some other name. The specified fees, over which they have no discretion, should not be made to include anything not fairly within their terms."

This case was cited with approval, in *Chipman vs. Wayne County Auditors*, 127 Mich. 490, in which the sheriff sought to recover, among other items, for turnkey fees other than first commitments or final discharges. Without discussing the matter the court rejected such claim on the authority of the earlier case.

In view of these decisions it would seem to be settled beyond possible question that the sheriff is not entitled to a fee of thirty-five cents for the commitment or discharge of a prisoner, under Section 12006 Compiled Laws of 1897 except in the instance of "first commitment" and "final discharge."

It will be noted that the concluding clause of this section, as pointed

out by the court in the Ionia County case, confers upon the Board of Supervisors the power to allow compensation to the sheriff for services not specifically covered by the statute itself. This clause may undoubtedly be taken as indicating that the Legislature did not intend to provide compensation for all acts performed by the sheriff in his official capacity; but rather as to such acts as were not specifically mentioned in the statute, contemplated that the Board of Supervisors would establish such fees as might be deemed proper.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

MOTOR VEHICLES. A motor truck constructed out of an automobile by altering the body thereof stands on the same plane as any other motor truck.

October 26, 1915.

Hon. Coleman C. Vaughan, Secretary of State, Capitol:

Dear Sir—It appears from your communication of the 25th inst. that in many instances automobiles that have been purchased for use as pleasure vehicles have been converted into trucks by necessary alterations. The owners of the same have, in certain instances, asked that such reconstructed vehicles be registered by you as trucks. The question arises as to whether such request may be complied with, or whether the license fee should be required to be paid upon any such vehicle as it was at the time of the purchase thereof.

Act 302 of the Public Acts of 1915, which provides for the licensing and registration of motor vehicles, defines a motor truck for the purposes of said Act as: "Any motor vehicle operating on more than two wheels and having when built by the manufacturer only one seat and no provision for other seats, and which shall be built and operated for the purpose of transporting articles other than persons." It occurs to me that the classification made by the Act must necessarily be regarded as based upon the use or uses to which the vehicles in each class are devoted. In other words, the essential part of the definition consists in the designation of the purpose of operation. Doubtless the clause with reference to the number of seats was included in order to prevent possible evasions. It seems to me, therefore, that a touring car or runabout that has been partially rebuilt and made into a truck, to be used for "the purpose of transporting articles other than persons" is to be regarded as a motor truck within the meaning of Act 302. The amount of the license fee to be paid on registering such a vehicle is to be determined accordingly. Any view other than as suggested must necessarily ignore the use to which a vehicle of the character suggested by you is devoted, and would make the character thereof when put forth by the manufacturer the controlling test. It is, I believe, a matter of common knowledge that automobiles are frequently rebuilt and there would seem to be no reason for placing a motor truck that is made by altering a pleasure car on a different basis than vehicles constructed, in the first instance, as motor trucks. It can scarcely be presumed that the Legislature intended to

make any discrimination of this character especially as the validity of such a discrimination would be subject to grave doubt.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

CONTRACTS. The captain of a boat may not under ordinary circumstances bind his company by verbal contract for the medical services furnished to a member of the crew.

October 26, 1915.

Edward T. Abrams, M. D., Vice President State Board of Health, Hancock, Michigan:

Dear Sir—This Department is in receipt of your letter of the 20th inst. with reference to the care of contagious disease cases under certain circumstances. In the particular case to which you call attention it appears that a certain boat en route from Buffalo to Duluth stopped at Houghton where it was discovered that at least one member of the crew had typhoid fever. The boat was fumigated and allowed to proceed on her journey after the patient had been removed. The captain of the boat informed the local health officer at Houghton that the Company would pay the hospital and physician's bills. Relying upon this statement the patient was taken to a hospital at Hancock and was there attended by the health officer of Houghton, acting as a private physician. The Company owning the boat, as I understand the matter, refuses to pay the bill that has been incurred, and the question arises as to whether or not such payment may be compelled. You state that the opinion of this Department is desired because similar instances may arise at any time.

In the particular instance stated it does not occur to me that the Company can be held liable on the verbal statement made by the captain of the boat. Such captain was of course the employee and agent of the Company but his agency must I think be regarded as a limited one. Persons dealing with him as a representative of the Company were bound to take notice of the character of his agency and be guided accordingly. Leaving out of consideration the fact that the promise made was a verbal one, I am impressed that any action against the Company based on such promise must necessarily fail because of the lack of authority of the Captain to bind his Company. Stated somewhat differently, the captain of a boat can, under ordinary circumstances at least, be scarcely regarded as vested with authority by virtue of his employment to bind his company by a contract of this nature. Rather such an undertaking in cases in which it is sought to hold the company responsible must be made by some official who has the requisite authority, and should, of course, be made in writing in order to obviate any possible question that may arise as to the exact nature of the obligation.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

HIGHWAY—TAXES. That portion of the tax assessed against the township at large under Act 59 of 1915, for the improvement of highways, is to be assessed uniformly against all taxable property within the township.

October 26, 1915.

Mr. Leroy Wilson, Waldron, Michigan:

Dear Sir and Friend—I am in receipt of your communication of the 15th inst., relative to Act 59 of the Public Acts of 1915 in which you ask to be advised as to whether the improvement of a certain highway passing through an incorporated village, said highways having been established and laid out by the township before the incorporation of such village, would fall within the purview of said Act. Also, whether the taxes levied on the township at large for the improvement of the highway under the terms of this Act would be assessed against all the property of the township, including that within the limits of incorporated villages in said township.

Answering your first inquiry I would direct your attention to section 2 of the Act which provides that “any highway not included within the corporate limits of any city or village in this State may be constructed or improved under the provisions of this Act.” It would follow therefore that highways within the corporate limits of any city or village would not fall under the provisions of the Act.

As to your second inquiry, I find no express provision in this Act limiting property against which the tax is to be levied to property outside of cities and incorporated villages. Under the General Highway Law, there is but one fund created by a tax on property outside of incorporated villages and that is the road repair fund. The highway improvement fund under the general highway law is created by a tax spread on all of the property of the township at a uniform rate and as the intent of Act 59 of 1915, as expressed in section 1 thereof, is to provide an additional method for constructing and improving public highways, and to put in force where a portion of the cost of constructing or improving highways is paid by special assessment upon lands benefited thereby, I am of the opinion that the portion of the expense of building or improving a highway under this Act is made a tax against the township at large, should be spread upon all taxable property within the township at a uniform rate.

Hoping I have made myself clear in this matter, and with best personal regards, I am,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

G-pi-O

SUPERINTENDENTS OF POOR. No law preventing paying expenses of member of to State convention of superintendents.

October 26, 1915.

Mr. James McKenna, Sault Ste. Marie, Michigan:

Dear Sir—I have at hand your communication of recent date addressed to Mr. Greene of this Department in which you ask if it is permissible or legal for the county superintendents of the poor of a county to delegate one of their number to attend the State Convention of the superintendents of the poor and to pay his expenses while attending such convention.

Replying to this communication, permit me to say that I know of no law that would prevent the board of superintendents of the poor of a county from providing for the sending of a representative to a State convention of the superintendents of the poor and to provide for his expenses during such attendance. This, of course, is upon the ground that the board would receive some benefit from such attendance by one of their members.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

PSYCHOPATHIC HOSPITAL. Board of trustees have insurable interest in same.

October 26, 1915.

Mr. Shirley W. Smith, Secretary, University of Michigan, Ann Arbor, Michigan:

Dear Sir—I have before me your recent communication in which you state that the Board of Regents of the University of Michigan have instructed you to obtain the opinion of this Department on the question of whether the Board of Regents of the University have an insurable interest in the State Psychopathic Hospital.

I am informed that the State Psychopathic Hospital has been considered by the Auditor General in making his list of State institutions insurable under Act 388 of the Public Acts of 1913 as a part of the University of Michigan, and therefore, exempt from the operations of that Act in that it is a State institution created by the constitution of the State. Accordingly I am of the opinion that as section 6 of Act 278 of 1907 vests the government and sole control of the Psychopathic Hospital in the Board of Trustees of said hospital, such Board of Trustees would have a sufficiently insurable interest in said Hospital to authorize them to provide for the insurance of the building and contents against fire and other hazards.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

INSANE PATIENTS. MAINTENANCE OF. Board of supervisors have authority to charge support of patients treated at State hospitals to various cities and townships where distinction between township and county poor has not been abolished.

October 26, 1915.

Mr. N. M. Davis, Jackson, Michigan:

Dear Sir—I have before me your communication of the 21st instant in which you ask if it is legal for the board of supervisors of a county to apportion among the various cities and townships of the county the cost to the county of the support of insane patients at the State hospitals, said apportionment being made according to the number of patients sent to the hospitals from each city and township during the year.

While the statute provides that the first year's maintenance of a public insane patient at the State hospital shall be charged to the county from which the patient was committed, in counties where the distinction between county and township poor has not been abolished, it is both customary and legal for the board of supervisors to charge the cost of maintenance of such patients to the various cities and townships of the county in which they had a residence at the time of their commitment.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

BANKING LAW. No authority for a State bank to hold stock in a Building Company for the purpose of providing a Banking House.

October 29, 1915.

Hon. Frank W. Merrick, Commissioner Banking Department, Capitol:

Dear Sir—Your communication of the 28th inst., received as follows:

“I desire to call your attention to Section 11 of the banking law, which provides that a bank may purchase and hold real estate such as shall be necessary for the convenient transaction of its business, including with its banking office other apartments to rent as a source of income, but which shall not exceed fifty per cent of its paid in capital. Under this provision of said Section I desire to inquire whether or not in your opinion, it would be legal for a State bank to carry as an asset stock of a Building Company up to fifty per cent of capital? The Building Company is one organized for the purpose of erecting a bank and office building for the State bank, which bank heretofore held a ninety-nine year lease of the property. The capital stock of the Building Company is \$250,000, all held by the directors of the bank, and the Building Company will also have a bond issue of \$250,-

000, retireable at the end of twenty-seven years from the income of the building.

Trusting that this will have your early attention, * * *."

It is my understanding from your inquiry that this particular bank contemplates carrying the stock in the Building Company as an asset under its banking house account.

The authority of a State bank to invest in real estate is limited by the provisions of Section 11 of the General Banking Law to which you refer. Unquestionably this section contemplates direct ownership either by way of a fee or, as we have heretofore held, a long term lease. See Attorney General's Report for 1914 at page 578. I do not think that the provisions of this section can be further extended by construction.

Moreover the authorities are uniform in holding that unless expressly authorized by statute, State and National banks can not hold stock in other corporations and where they are authorized to hold such stock they can only do so in the manner and for the purposes prescribed. Upon this proposition you are respectfully referred to Attorney General's Report for 1914 at page 434.

Further discussion of this matter I think is unnecessary, and your inquiry is therefore answered in the negative.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

P-pi-O

BOARD OF SUPERVISORS. May not enact a local law.

November 1, 1915.

Hon. Woodbridge N. Ferris, Governor, Lansing, Michigan:

Dear Sir—I have before me a resolution that has been enacted by the board of supervisors of Delta county with reference to the use of public highways in said county by vehicles. In accordance with the statute said resolution has been submitted to you for your approval and you have asked that I give you my views as to the legality thereof.

It appears that the board of supervisors have sought to adopt this resolution in accordance with section 2484 of the Compiled Laws of 1897 as last amended by Act 397 of the Public Acts of 1913. The 13th subdivision of said section confers upon the board of supervisors the authority "to pass such laws, regulations and ordinances relating to purely county affairs as they may see fit, but which shall not be opposed to the general laws of this State and which shall not interfere with the local affairs of any township, incorporated city or village within the limits of such county." Assuming for the time being the validity in all respects of this statutory provision, the first inquiry must be as to whether or not the particular measure passed by the board of supervisors of Delta county comes within the scope of the language quoted. It will be observed that no law, regulation or ordinance is sought to be authorized by the statute unless the same relates to purely county affairs, and furthermore it must be of such a character as not to inter-

fere with any general law of the State. While this measure is termed a "resolution" it is in substance in the nature of a local act designed to regulate the use of the public highways by certain vehicles. If the same were adopted and regarded as valid, the public roads of Delta County would be subject to certain restrictions as to their use that are not enforced as to public roads in the other counties of the State. If this resolution can be upheld as a valid exercise of the authority of the board of supervisors, then every county in the State might enact measures along this line with the result that endless confusion and uncertainty would result as to a matter in which the people of the whole state are interested. It does not occur to me that a measure of this kind, regardless of the name by which it may be called, can be considered as relating to "purely county affairs." All the people of the State are entitled to use the highways of Delta County, if they so desire, and it is the theory of the law of the State that such highways shall be maintained for all and not merely for the residents of the county. The measure thus violates the spirit of the general law of the State as to the purpose for which highways shall be constructed and maintained. The State is now, and for some years past has been, spending large sums of money throughout the State on the theory suggested, that is, that the public highways are for the use of all people of the State rather than for the use of a locality.

It has been the view of this Department that the statute, insofar as it attempts to confer upon boards of supervisors, the authority to enact local laws, is unconstitutional. I would call your attention to an opinion rendered on the 9th of March 1910 by Judge Bird, then Attorney General, to Governor Warner, which is found on page 208 of the Attorney General's Report for the year 1910. In addition to the reasons therein set forth in support of the proposition that the statute is to the extent indicated unconstitutional, I would further call your attention to the fact that the State Legislature is itself under section 30 of Article V of the State Constitution forbidden to enact local legislation in any case in which general laws can be made applicable. If the legislature may not enact local laws, it must follow as a logical inference that it cannot delegate such power to boards of supervisors. In other words, under any possible aspect of the matter, the legislature cannot delegate a power that it does not itself possess.

The particular measure before me may also be objected to on the ground that section 3 thereof is clearly discriminatory and would for that reason invalidate the measure, if such an enactment could be adopted legally by the board of supervisors. It would appear also that subdivisions "e" and "f" of section 1 are fully in harmony. It would appear that any one operating a four-wheeled vehicle on the highways of Delta County in the event of the combined weight of load and vehicle equaled five tons must necessarily violate one or the other of these subdivisions. In view of the above suggestions, however, I do not think it is necessary to go into specific detail with reference to the form of the measure.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

SCHOOL LAW. Land that has been taxed for building a school house within a period of three years cannot be set off without the consent of the owner regardless of the particular amount raised or the fact that the building was not erected.

November 1, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing, Michigan:

Dear Sir—You have recently referred to this Department a communication addressed to you by the county commissioner of schools of Isabella County and have asked that I give you my views with reference to the question of law suggested therein. It appears that the matter of detaching land from a certain school district in said county and attaching it to another district has arisen. The procedure to be observed is indicated in section 9 of Chapter 2 of the general school law by which the township board is given discretionary power to take action, subject, however, to the provision that “no land which has been taxed for building a school house shall be set off into another school district for a period of three years thereafter, except by the consent of the owners thereof.” In the specific instance referred to in the letter of the commissioner, it appears that a small amount has been raised for the building fund in the school district from which it is sought to detach property, for each of the three years preceding the past year. It further appears that no school building has in fact been erected as yet. The point at issue is as to whether or not the provision of the statute referred to applies, that is, whether or not because of the tax that has been levied and collected for the building fund, it is now competent for the township board to detach property from the district without the consent of the owners.

The statute is specific and unambiguous in its terms. No exception is suggested to the rule laid down as to the detaching of property that has been taxed within three years for the building of a school house. It will be noted that the legislature has made the payment of the tax the controlling factor, and not the erection of the building. It will be presumed, of course, in any such case, in the absence of any showing to the contrary, that a tax so voted, assessed and collected, is intended to be used for the purpose expressed, that is, for the building of a school house. If for any reason it is not so used or if the actual construction of the building is delayed, it can scarcely be said to be the fault of the individual taxpayer, for which he is to be penalized by taking from him the measure of protection sought to be afforded by the provision of the statute under consideration. Nor has the legislature made any distinction based upon the amount of money raised for building purposes. The inquiry must be in each case of this kind that arises: Has the land sought to be detached from the district been taxed for the purpose of building a school house during the three preceding years? If it has been so taxed for such purpose, then it may not be detached without the consent of its owners. As indicating the strictness with which this statute is applied by the courts, I would call your attention to the de-

cision of the Supreme Court of the State in *Coulter v. School Inspectors*, 59 Mich. 391.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. Money returned to a county under section 34 of the Motor Vehicle Law may be used for either construction or repair of highways and in a county operating under the county road system, its use is to be determined by the county road commissioners and not by the board of supervisors.

November 1, 1915.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Michigan :

Dear Sir—Section 34 of Act 302 of the Public Acts of 1915, the so-called Motor Vehicle Law, provides for the use of the fees paid to the Secretary of State thereunder: Among other provisions, it is declared that “fifty per cent of the amount collected from the registered motor vehicles in each county shall be returned to the treasurer of each county to be used to maintain the highways by the local authorities.” It appears that some question has arisen in the County of Wayne as to whether or not money returned under this proviso to that county may be used for road construction as well as repair of highways. I note that you have indicated to the commissioners that in your opinion the money may be so used, calling attention to the subsequent provision of the section referred to permitting the boards of supervisors in counties not operating under the county road system to apportion the tax received to the various townships and cities of the county to be used thereby “for the construction and maintenance of the highways.” I am impressed that your construction of the statute is correct. It can scarcely be presumed that the legislature intended to discriminate in any way against counties that are operating under the county road system by limiting the purposes for which the money returned might be used. The presumption of uniform operation must obtain in any such case and specific language must be construed in accordance with the evident purpose of the statute. Accordingly the expression “to maintain the highways” as used in the proviso above quoted is to be taken in its broad sense as contemplating not only necessary repairs but also necessary construction work.

The further question is also raised as to the meaning of the expression “local authorities” as used in this proviso. Stated somewhat more specifically the precise question at issue in Wayne County is apparently whether or not the board of supervisors will have any authority to direct the expenditure of money returned to that county. It will be noted that the statute does not, in express terms, grant any such authority to the board and in counties not operating under the county road system, the only power conferred on the supervisors is that of apportioning the money to the townships and cities in accordance with the assessed valuation. Bearing in mind the evident purpose of the legislature in the enactment of these provisions in section 34, I am impressed that the term “local authorities” must be taken to mean those authorities invested by law

with powers and duties in connection with the actual work of repairing and constructing streets and highways. In a county operating under the county road system, the board of county road commissioners must, in my opinion, be regarded as invested with authority to use money returned under the statute for the construction or maintenance of highways as such board seems proper and expedient. The board of supervisors may not, therefore, indicate the particular places where such money shall be expended, nor the purposes for which it shall be used.

Very respectfully,

GRANT FELLOWS,

Attorney General.

Ca-v-O

BOARD OF SUPERVISORS. May take action under Act 132 of 1915 even though the county is not operated under the county road system.

November 1, 1915.

Mr. Herbert C. Hall, Prosecuting Attorney, Ionia, Michigan:

Dear Sir—This Department is in receipt of your letter of the 26th instant in which you request our views as to the construction to be placed on sections 2659 and 2660 of the Compiled Laws of 1897 as last amended by Act 132 of the Public Acts of 1915. Said sections as amended provide in substance that the board of supervisors may enact a resolution requiring that certain prisoners confined in the county jail shall be required to work upon the public highways, streets, alleys or roads in the county, subject to certain regulations and restrictions that are set forth. You state that the County of Ionia is not operating under the county road system and that, in consequence, there is some question in your mind as to whether the board of supervisors in your county may take the action suggested by the statute in question. Stated somewhat differently, the point at issue is whether or not prisoners may be compelled, under a resolution of your board of supervisors, to work on roads in various townships, villages and cities of the county.

The statute as drawn clearly contemplates that the board of supervisors may adopt such a resolution and that the same may be carried out without reference to whether the county road system has been adopted or not. You will note that section 2659, as amended, provides in specific terms that the prisoners shall be required to work on the streets or roads "in any township, city or village in such county." It is further declared in the same section that the commissioner of highways of the township or the proper municipal authorities may make application in the manner prescribed by the board of supervisors to have prisoners work on the roads. Likewise, the language of section 2660, as amended, supports this same view. The first section of said section makes provision for the work being done under the direction of the highway commissioner or the proper road authorities of the city or village. The statute is, of course, to be so construed as to carry out the legislative intent and it does not occur to me from an examination of the two sections in question that there can be any serious question as to what the intent of the law-making body actually was. It is true in one sense of

the word perhaps that work on the roads in a particular township is not done "for a county purpose" but at the same time, the improvement of the highways in any part of the county must be regarded as benefiting to a certain degree the entire county and likewise the entire state inasmuch as the highways are for the common use of all. I do not think that we can construe these sections of the statute as indicating an intention to provide for the labor of prisoners for county purposes only. Rather the intent of the legislature was, as before suggested, that certain prisoners confined in the county jail should be required to work for the public benefit. I believe that the expression in the first section with reference to the performance of any other lawful labor "for the benefit of the county" is to be construed in connection with the rest of the act as meaning that the work to be done shall be for the public benefit. Any other construction must necessarily result in limiting the scope of the sections in question and to a considerable extent defeating the manifest purpose of the legislature. I am impressed, therefore, that your board of supervisors, notwithstanding that the county road law is not operative in your county, may adopt a resolution along the line suggested and that such a resolution may be enforced.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

WEIGHTS AND MEASURES. A practice by which snow, ice, mud, etc., are weighed in as coal and charged to a retail dealer is not within the purview of Act 168 of 1913.

November 2, 1915.

Hon. Burr B. Lincoln, Deputy Dairy and Food Commissioner, Lansing, Michigan:

Dear Sir—I have before me your letter of recent date in which you refer to a certain custom that appears to obtain in sales of coal in car-load lots by wholesalers to retail dealers. I note your statement that in the instances of cases so made, cars are weighed when filled with coal, while the weight stamped on the car is taken as the tare weight. It has been found upon investigation that cars will frequently accumulate from one to three tons of ice, snow or mud, which is, under the practice suggested, weighed in as coal and paid for as such by the retail dealer. The question arises as to whether or not a condition of this nature violates the State Law with reference to weights and measures. Inasmuch as the enforcement of said law is vested in your Department, you have asked that I give you my views upon the matter.

The statute to which you refer is Act 168 of the Public Acts of 1913, entitled: "An Act to provide for a state Superintendent of weights and measures, State, county and city dealers and inspection of weights and measures, prescribing their powers and duties, providing penalties for fraud and deception in the use of false weights and measures and confiscation thereof and repealing sections 4882 to 4897 inclusive of the Compiled Laws of 1897." As indicated by the title, the purpose of this

measure is to prevent the use of false weights and measures. The provisions of the body of the act are in harmony with this general purpose. In the instance that you have stated, however, it does not appear that there is any question of a false or inaccurate weight involved. Rather the complaints that have been made have been due to the weighing in of other substances with the coal and the inference seems to be that a custom which is accepted by both wholesalers and retailers as an incident to the business is really responsible for the unsatisfactory situation to which attention is called. In any event, however, and without reference to the proposition as to whether or not such practice has become a trade custom, it seems apparent that such a case is not one within the purview of Act 168 of 1913. Clearly no deception is practiced through the medium of false weights.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

CORONERS. Should not conduct a post mortem without an inquest and should not make himself a witness in the case.

November 2, 1915.

A. M. Wilkinson, M. D., Charlevoix, Michigan:

Dear Sir—I note from your communication of recent date that you hold the office of coroner in Charlevoix County and that some question has arisen as to your authority to perform post mortem examinations in certain cases. The precise point at issue is whether or not such an examination may be made by you in your official capacity as coroner without an inquest being held, compensation therefor being made by the County.

The statute does not seem to contemplate any such procedure as you suggest. Section 11831 of the Compiled Laws of 1897 empowers a coroner who conducts an inquest to summon a competent surgeon or chemist when the attendance of such is deemed necessary. This statute must, I believe, be taken to imply that a post mortem examination is not to be made by, or pursuant to the direction of, a coroner except where a formal inquest is held. It will be noted also that the statute does not empower the coroner himself to make such an examination. Rather he is empowered to procure a competent witness for that purpose. Clearly if a coroner is to conduct the inquest he should not put himself in the position where he may be required to testify. It seems to me, therefore, that in a case falling within the jurisdiction of a county coroner if the circumstances surrounding the death are of a suspicious character and such as in the judgment of the coroner demand an examination including a post mortem, an inquest should be held and the provision of the statute with reference to procuring a surgeon or a chemist should be observed. Under the law the coroner acts in a judicial capacity and it does not seem to have been the intent of the legislature that he should so far investigate as to make himself a witness. If he does so he would

not, in my opinion, be entitled to make any charge for such extraordinary services against the county.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

MICHIGAN RAILROAD COMMISSION. Has no authority to intervene in matters pending before the Interstate Commerce Commission with reference to the interstate freight rates on bituminous coal from W. Va. fields to Michigan points.

November 2, 1915.

Michigan Railroad Commission, Lansing, Michigan:
Attention Mr. Cunningham.

Gentlemen—You have submitted to this Department a certain file containing many requests from various chambers of commerce and individuals throughout the State of Michigan with reference to a matter now pending before the Interstate Commerce Commission relative to bituminous coal rates from West Virginia and Ohio to points in Michigan. From the correspondence submitted it appears that the rate of bituminous coal from the State of West Virginia to points in Michigan has for many years been maintained upon the basis of 25 cents per ton in excess of the rate from the Ohio fields to the same point in the State of Michigan, that because of this fact, the Michigan trade has gone to the Ohio operators, that recently because of labor troubles the Ohio operators were unable to supply the established Michigan trade which resulted in West Virginia operators obtaining a large portion of the same, that the said labor troubles in Ohio fields have now been settled, but that the Michigan trade still continues to go to West Virginia. Because of this situation the Ohio operators are now seeking a greater difference in rate in order to force the Michigan trade back to them and with this end in view have petitioned the Interstate Commerce Commission for an advance in the West Virginia rate. As before stated, the various interested parties in the State of Michigan have petitioned your Commission to intervene in the proceedings now pending before the Interstate Commerce Commission and you request our opinion as to your authority for the same.

In reply, we have gone over the matter very carefully and are impressed with the opinion that the statute creating the Michigan Railroad Commission confers upon your Commission no authority to intervene in matters of this nature pending before the Interstate Commerce Commission, and we would, therefore advise that, in our judgment, nothing of this kind should be attempted by your Commission.

The files submitted are returned herewith.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

MICHIGAN RAILROAD COMMISSION. A Company contracting with the public to ship merchandise and then hiring railroads to perform such services is within the provisions of Act 144 of 1909, as amended by Act 259 of 1915, and must first apply to the railroad commission before issuing its capital stock.

November 2, 1915.

Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—Yours of recent date enclosing communication from Gerhard & Hey, incorporated, a New York Corporation, received and contents noted. You request our opinion as to whether the business of Gerhard & Hey is of such a nature that it should be included within the provisions of Act 144 of the Public Acts of 1909, as amended by Act 259 of the Public Acts of 1915 and specifically whether the said Company may issue its capital stock without first applying to the Michigan Railroad Commission for an order authorizing the same.

It appears from the correspondence submitted that this Company is engaged in the exporting and importing business and contracts to transfer and deliver freight, baggage and other commodities; that it does not deliver the merchandise but employs railroads to ship the same to the coast and then steamship companies to ship the merchandise abroad.

From the facts submitted, we are of the opinion that said Company is within the provisions of the Act, and that it would be necessary for it to make application to your Commission before proceeding to issue its capital stock.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

VETERINARY SURGERY. It is not the duty of the Board to permit an applicant to take the examination unless such applicant complies with the provisions of Sec. 5 of Act 244 of 1907, as amended by Act 45 of 1915.

November 2, 1915.

Judson Black, Secretary, Michigan State Veterinary Board, Richmond, Michigan:

Dear Sir—You have recently requested this Department for an opinion as to whether or not it is the duty of your Board to permit a certain applicant to take an examination for a license to practice veterinary medicine, surgery and dentistry. As I understand the situation, the party in question graduated some twenty years ago from a recognized veterinary college which at the present time offers a three years course but which at the time of graduation gave a two year course only. He, as it appears, has been practicing as a veterinary surgeon in this State for several years past without being licensed.

The matter of the registration and licensing of practitioners of veterinary medicine and surgery is governed by Act 244 of the Public Acts of 1907, as amended by Act 45 of the Public Acts of 1915. In accordance with the provisions of Section 5 of said Act, as so amended, no person

may be registered unless he shall take such examination as may be required by the State Veterinary Board. It is further declared that: "No person shall be eligible to take the examination herein provided for unless he has completed a course of study in a regular veterinary college having a curriculum of not less than three years of six months each and which shall require the personal attendance of its pupils, and shall have received a diploma from said college." The exact point at issue is, therefore, whether or not the fact that the applicant, to whom your inquiry refers, graduated from the college mentioned, can be deemed to entitle him to take the examination offered by the Board.

It seems to me that it was the intention of the Legislature to require that each applicant must actually have finished a course of study in a regular veterinary college, which course shall have consisted of three years of not less than six months each. In the instant case the person now seeking the privilege did not complete such a course. It does not occur to me that the fact that his College lengthened its course after his graduation therefrom can be deemed to affect his rights in any way. In other words, the statute must be so construed as to have reference to the curriculum of the particular school at the time when the course of study was taken therein by the applicant rather than to the course of study at some subsequent time. In accordance with these suggestions, it is my opinion, based upon the statement of facts submitted, that the Board may not be compelled to permit the applicant in question to take the examination.

As supporting this conclusion I call your attention to the decision of the Supreme Court in the case of Folsom vs. State Veterinary Board, 158 Mich. 277.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

INSURANCE—BOARD OF SUPERVISORS. Member of Board of Supervisors not deemed expedient to write insurance upon County Institutions.

November 4, 1915.

Mr. Albert W. Black, Prosecuting Attorney, Tawas City, Michigan:

Dear Sir—In answer to your inquiry of recent date as to whether an insurance policy would be void when written upon county property by a Supervisor of the County acting as agent for the Insurance Company, I beg to advise you as follows: Section 11384 of the Compiled Laws of 1897 provides as follows:

"That no trustee, inspector, regent, superintendent, agent, officer, or member of any board having control or charge of any educational, charitable, penal, pauper, or reformatory public institutions of this State, or of any county thereof, shall be presently directly, or indirectly interested in any contract, purchase, or sale made for, or on account, or in behalf of any such institution, and all such contracts, purchases or sales shall be held null and void; nor shall any such officer corruptly accept any bribe from any persons interested in such contract; and it is hereby made the duty

of the governor or other appointing power, upon proof satisfactory of a violation of the provisions of this section, to immediately remove the officer or employe offending as aforesaid; and upon conviction thereof before a court of competent jurisdiction, the offender shall be punished by a fine not exceeding five hundred dollars."

From my examination of this question I would hesitate to say that an insurance company would be permitted to deny its liability upon an insurance policy issued under the circumstances stated in your inquiry. I question very much, however, the propriety of a member of the Board of Supervisors acting for an insurance company in effecting insurance on property owned by the County. Whether or not it will result in relieving the insurance company from its liability, the practice is dangerous and liable to lead to serious litigation in consequence. No Supervisor should subject his County to such a risk.

Trusting this will give you the desired information, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

M-pi-O

INSANITY LAW. Probate courts upon an affirmative showing of necessity therefor may continue the case and extend the time for observation treatment at the Psychopathic Hospital in section 17 of Act 278 of 1907.

November 5, 1915.

Dr. Albert M. Barrett, State Psychopathic Hospital, Ann Arbor, Michigan:

Dear Sir—I have before me yours of the 25th ult. requesting an opinion as to the construction to be given to a portion of section 17 of Act 278 of the Public Acts of 1907.

You state that many times an "observation order" for admission to the State Psychopathic Hospital is made by the Probate Court under the terms of said act 278, but that owing to lack of room at the Hospital the patients are not accepted for observation treatment until several days after the date of the order, many times leaving only a few days in which to complete the observation and make the report within the thirty-five days period provided by said section 17. You ask whether in such cases the court would be authorized to extend the observation period so as to give a greater length of time for observation treatment at the Hospital, or if this cannot be done, whether there is any remedy in such cases.

That portion of section 17 of Act 278 of 1907 under consideration provides in part as follows:

"The court may continue said hearing in said court not to exceed thirty-five days, and direct that such person shall be sent to the Psychopathic Hospital at the University of Michigan as a public or private patient, as a person afflicted with some nervous or mental disease, and that said person be there confined, observed

and treated for a period not longer than thirty-five days. Before the expiration of this period the director of the Psychopathic Hospital shall return to the Judge of Probate the results of his observation and treatment of said patient and an opinion stating whether said patient, is insane or sane."

The object of the observation order as provided in the language above quoted seems to be quite well expressed in the language preceding the quoted portion in that it authorizes an order for observation treatment only in cases in which the court deems such an order advisable on account of doubt as to the sanity or insanity of the person, or if in the opinion of the court, a permanent order of insanity is inadvisable, or if in the opinion of the court and examining physicians the case presents complicating diseases which may be treated by the clinical physicians in the general hospital of the University, and by such treatment the mental and nervous disability of the person be cured or benefited.

It was evidently within the contemplation of the legislature to prescribe a reasonable time for treatment and observation of the person and for the making of a report based upon such treatment and observation to the court to assist the court in its determination of the question before it. That the legislature intended that the full thirty-five days should be allowed for such observation treatment, if necessary would seem apparent from the fact that it is provided "that such person be there confined, observed and treated for a period of not longer than thirty-five days." It is also apparent that the legislature did not take into consideration the possibility of congested conditions or lack of room for such observation of patients at the hospital, but presumed that they were giving ample time in which the Hospital physicians and those in authority might intelligently treat and observe the condition of the patient and report the same accordingly. And while the legislature has limited the time during which the hearing in the court may be continued to thirty-five days and have provided that the person may be confined observed and treated for a period "not longer than thirty-five days," the whole object and intendment of the section might be thwarted in many cases where owing to lack of room at the Hospital, the patient could not be accepted for observation treatment until many days after the date of the order, and the continuance of the hearing, thereby leaving only a few days for observation, which in point of time might be wholly insufficient to enable the Hospital authorities to make any intelligent determination of the case and report accordingly.

I am, therefore, of the opinion that where it is shown affirmatively to the court that on account of conditions at the Hospital over which neither the court nor the Hospital authorities have adequate control, the patient was not admitted into the Hospital for treatment and observation in due time to enable an intelligent treatment and observation of his condition, and an intelligent report to the court concerning the same, that the court, would have authority to extend the hearing a reasonable time, not longer than thirty-five days, from the expiration of the first continuance, to enable the object and intendment of the statute to be carried out. This could be done only by an order of the court and upon an affirmative showing of necessity therefor.

Hoping I have made myself understood in my interpretation of the construction to be given the statute in question, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

G-v-O

SCHOOL LAW—COUNTY COMMISSIONER OF SCHOOLS. Board of Supervisors must take action to fix salary and may be compelled to do so.

November 5, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Capitol:

Dear Sir—I have before me your letter of recent date in which you refer to an opinion of this department rendered to your predecessor under date of April 25th, 1913, and which appears on page 507 of the annual report of this department for the year nineteen-thirteen. Said opinion dealt with the fixing of the compensation of a County Commissioner of Schools by determining the number of school rooms in the County. In view of that holding the further question is raised by you as to whether or not a School Commissioner may "collect the salary as indicated by the number of schools if the board of supervisors have taken no action to increase the salary at the October meeting following the date of his assuming office."

The County Commissioner of Schools is entitled to draw the salary pertaining to that office at the time of his election thereto. This of course assumes that the Board of Supervisors has taken action pursuant to the statute, at the time specified by the statute and has properly fixed the compensation. If for any reason a Board of Supervisors has not acted on this matter, then it is my opinion that such action may be compelled in a proper proceeding brought for that purpose. The statutes of the State clearly contemplates that the Board of Supervisors in each County shall pass upon this matter subject to the terms of the statute, and that each County Commissioner of Schools shall draw his compensation in accordance with the Resolution of the Board. If for any reason a Board of Supervisors fails to observe the terms of the statute and enacts a Resolution seeking to fix such salary at a less amount than may be allowed in such County, the Resolution must of course be regarded as invalid. The same situation would then be presented as would obtain in case no action at all was taken by the Board and consequently the adoption of a valid Resolution, that is, a Resolution in accordance with the statute, might in such event be compelled. As I view the Act of the Legislature, it is not to be regarded as self executing, that is, as requiring the payment of the minimum amount allowable in case the Board of Supervisors neglects or refuses to take action. Rather, as suggested, it is clearly the intent of the statute that the Board shall act. Such being the case, the conclusion would seem to follow as a matter of logical inference that proper action may be compelled if the Board refuses to perform the duty placed thereon.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

BOARD OF SUPERVISORS. Resolution thereof in Arenac County considered and construed as providing a temporary recess or adjournment of the regular term.

November 5, 1915.

Mr. R. J. Crandall, Prosecuting Attorney, Standish, Michigan:

Dear Sir—It appears from your letter of the 29th ult. that, while your Board of Supervisors was in session at its regular October meeting, the members were informed that the State Tax Commission intended to reassess part or all of Arenac County, and that a delay would be thereby made necessary in the equalization of the tax rolls. Acting pursuant to this information the Board of Supervisors adopted the following resolution:

“Whereas, J. N. Snody, member of the State Board of Tax Commissioners, appeared before this board at its first session and stated that the whole or a part of Arenac county is to be reassessed by said board necessitating about 30 days delay in the equalizing of the tax rolls of the several townships and cities of the county, therefore be it resolved that this board does now adjourn subject to the call of the county clerk.”

The question has arisen as to whether or not the action that has been taken amounts to a continuance of the regular October session, or if the resolution must be construed as providing for a special session of the Board. You have asked that I give you my views upon the matter.

Section 2475 of the Compiled Laws of 1897 provides for regular meetings of the Board of Supervisors and states specifically that such Board “shall have power to adjourn from time to time as they may deem necessary.” It thus appears that the statute contemplates that the Board will take such recesses, or temporary adjournments from time to time, as may be found expedient for the carrying on of the work devolving on the Board. In the instant case I am impressed that we must construe the Resolution in accordance with the evident purpose thereof rather than by giving to the specific language employed any narrow or technical meaning. It is indicated by the resolution itself that a certain duty devolving upon the Board by virtue of the statute, namely, the duty of equalizing the rolls, could not be immediately performed because of the action of the State Tax Commission. For that reason it was necessary that a recess be taken, and apparently it was the intention of the Board to make provision therefor. In other words, the resolution is, in my opinion, to be interpreted as though it provided in express terms for an adjournment or recess until a specified time, that is, until the State Tax Commission had completed its work. The reference to the Clerk must accordingly be taken, not as investing such officer with the right to say whether the Board should or should not convene at a particular time but rather as a direction to him to advise the members of the Board when the particular time contemplated by the resolution to which the recess was to be taken, had arrived. So viewed, the action of the Clerk becomes a ministerial one, and the time to which the adjournment or recess is

taken becomes certain and definite. I think it may be safely said, as a legal proposition, that inasmuch as the date will become fixed and ascertainable it is to be regarded as having that quality as of the time when the recess was taken.

As tending to support this construction, I wish to call your attention to *Gilbert vs. Canyon County* (Idaho) 94 Pac. 1027; In this case it appears that the statute made provision for regular meetings, adjourned meetings, and special meetings of the County Board. A regular session was held in the month of October at which business that, under the laws of Idaho, could be transacted only at a regular meeting was taken up and considered. On the 17th of the month the Board adopted a resolution adjourning until the first of November following. On the reconvening the question arose as to the character of business that might be dealt with by the Board which of course depended, under the statute referred to, on the classification of such meeting. It was held by the Court that the action should be construed as providing for a recess, and that the meeting in November was merely a continuation of the regular October session and in consequence to be regarded insofar as the business to be taken up was concerned, as a regular meeting.

In the case that you have stated it is, I assume, immaterial whether the interval contemplated by the resolution of your Board of Supervisors is termed a "recess" and the reconvening of the Board regarded as a continuation of the October session or as an adjournment of such session. Insofar as the matters suggested by you are concerned, the result would be the same in either aspect. I wish to direct your attention also to the case of *Hubbard vs. Winsor*, 15 Mich. 146, in which it was held that the regular October session of the Board of Supervisors is to be deemed to embrace adjourned sessions even though the same were held in subsequent months.

While I do not think that the future meeting contemplated by the resolution submitted is to be regarded under any aspect of the case as a "special" meeting, it does not occur to me that such view would render any equalization of the tax rolls invalid. It is true that the statute declares that the duty of equalizing shall be performed by the Board at its October meeting. It must, however, be borne in mind I believe that this duty is of such a character that its performance may be enforced in a proper action and that in consequence a Board of Supervisors may not avoid it by adjourning. If necessary a reconvening might be enforced to take care of the matter. Such being the case it would seem to follow as a matter of logical inference that a Board might at a special session duly and properly called take such action if for any reason the requirement of the statute as to equalization was not observed at the October meeting.

What has been said above with reference to the character of the meeting contemplated by the resolution disposes of the inquiry with reference to local option petitions. Under the statute, Section 5 of the Local Option Law, such petitions are to be presented to the Board by the County Clerk "at the next regular or adjourned meeting." It thus appears that it was within the contemplation of the Legislature that such a petition should be presented at a special session. It has heretofore been the holding of this Department that such petitions

must be on file at the beginning of the session, whether regular or adjourned, at which action thereon is sought. I apprehend that the conclusion above reached obviates any question as to the validity of the action to be taken on such petitions.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

LIQUOR LAW. Section 5404 C. L. 1897 does not require that a separate label bearing the words "pure and without drugs or poison" be placed on the container.

November 6, 1915.

Mr. Charles H. Jasnowski, Prosecuting Attorney, Detroit, Michigan:

Dear Sir—Section 5404 of the Compiled Laws of 1897 requires that every person engaged in the manufacture and sale of certain liquors shall brand on each barrel, cask, or other vessel, containing the same the name of the person or company putting forth the product together with the words "pure and without drugs or poison." It appears from your communication of the 2nd instant that it has been customary for brewing companies to affix to all cases and bottles in which intoxicating liquors are put on the market a label on which appears the name of the product and of the manufacturer and also a separate label on which is printed or stamped the words quoted above. The question has arisen as to whether or not the statute may be complied with by stamping or printing such words on the trade label bearing the name of the manufacturer. You have asked that I give you my views upon the matter.

It does not occur to me that it is material whether the particular words prescribed by the legislature and intended to guarantee the purity of the product appear on a distinct label or on the so-called trade label. The intention of the legislature obviously was that such expression should appear on the cask or other container, but it is not required in specific terms that it be separately placed thereon nor do I believe that we may properly read such requirement into the language that is found on the statute. If the words "pure and without drugs or poison" are so placed on the container that they can be regarded as branded thereon, I do not think that their position with reference to the name of the product and of the manufacturer is material.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

TOWNSHIPS. Townships of Peain and St. James in Charlevoix County are not adjoining to any township on the main land.

November 6, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing, Michigan:

Dear Sir—Section 4 of the Compulsory School Law of the State, Act

200 of the Public Acts of 1915, as amended, permits a truant officer to make a complaint against any one violating said law before a justice of the peace "in a city, village or township where such party resides or in an adjoining city or township in such county." The townships of Peain and St. James, Charlevoix County, consist wholly of certain islands in Lake Michigan and are some distance from the mainland. In view of this situation the question arises as to whether or not any of the other townships of the county may be regarded as "adjoining townships" within the meaning of the statute in question, in so far as the trial of truancy cases arising in Peain and St. James is concerned.

I am impressed that the word "adjoining" must be given its customary meaning and that in consequence the two townships referred to cannot be deemed to bear such relation to any of the remaining townships of Charlevoix County. Undoubtedly the legislature in limiting the jurisdiction of justices of the peace in the manner indicated intended to prevent the taking of a person complained against for a considerable distance from his home and trying him for a minor offense in some distant portion of the county. To so construe the statute as to allow the making of a complaint against a party residing in Peain or St. James before a justice of the peace of some township on the main land would, it is obvious, violate the spirit of the limitation enacted by the legislature. Said townships, of course, adjoin one another, Big Beaver Island being partly in each. As suggested, however, it is my opinion in answer to your specific inquiry that neither township may be regarded as adjoining any other township in Charlevoix County.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

INDETERMINATE SENTENCE LAW. Where the statute prescribing the offense fixes the minimum term of imprisonment, such minimum term will prevail.

November 7, 1915.

Mr. E. C. Austin, Secretary, Advisory Board in the Matter of Pardons, Lansing, Michigan:

Dear Sir—I have before me your communication of recent date in which you state that on November 14th, 1914, one Ray Pepper was sentenced to the Michigan State Prison to serve a term of one and one-half minimum to fifteen year maximum sentence for the crime of horse-stealing. You desire to know whether the above minimum of one and a half years is correct under the indeterminate sentence statute, and if not, what should stand as the minimum sentence in that case.

Section 11595 of the Compiled Laws of 1897 prescribed the punishment upon conviction of horse stealing and provides that any person convicted of the same "shall be punished by imprisonment in the State Prison, not less than three years nor more than fifteen years." The indeterminate sentence law provides that where the law prescribing the punishment for the offense of which the convict stands convicted fixes the minimum term of imprisonment then the minimum term fixed by law shall be the minimum term of imprisonment. This being true and the minimum term for

horse stealing being fixed by the statute at three years, such must be considered the minimum term of the sentence.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

HIGHWAY LAW. Electors and women taxpayers may vote on the question of bonding a township.

November 8, 1915.

Mr. Edmond D. Park, Harrison, Michigan :

Dear Sir—Your inquiry of recent date with reference to the matter of voting on the question of bonding a township for the purpose of raising money to construct so-called trunk line highway, is at hand.

In reply thereto I would call your attention to sections 8 and 10 of Chapter XIV of the General Highway Law. In accordance with these sections, one who is a legal voter in a township, that is, one who possesses the qualifications prescribed by the Constitution for voting at general elections, is entitled to vote on the question of bonding. In addition thereto a woman who possesses the same qualifications as are required of male electors and who is a taxpayer in the municipality or district, is entitled to vote. The statute, Act 206 of 1909, expressly provides that a woman who owns property jointly with her husband or with any other person, or who owns property on a contract and pays the taxes thereon shall be entitled to register and to vote if she possesses the constitutional qualifications prescribed for electors.

Money raised for the building of State reward roads of any character belongs to the highway improvement fund. Section 2 of the Highway law provides that said fund is to be expended under the direction of the Highway Commissioner and the Township Board. This authority must be deemed to carry with it by necessary implication the right to say what particular piece of road shall be improved.

With reference to the so-called trunk line highway, however, I would suggest that the route to be taken is outlined in the statute itself which must of course be observed by local authority.

Trusting that these suggestions will answer your inquiries, I am,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

FIFTY-FOUR-HOUR LAW. The employment of a telephone operator who is compelled by such employment to work 11 hours out of each 24 is a violation of law.

November 8, 1915.

Hon. James V. Cunningham, Commissioner of Labor, Lansing, Michigan :

Dear Sir—I am in receipt of your communication of the 3rd instant in which you quote for reply an inquiry sent to your Department rela-

tive to the construction to be placed upon certain portions of the 54-hour law.

The facts set forth in your communication are as follows: A certain night operator of a telephone company whose hours of duty are from eight P. M. to seven A. M. daily, is subject to call at any time between said hours although during the fall and winter months she usually gets several hours of sleep each night. A bell is connected to the switch board which awakens the operator when patrons call but her duties confine her to the office eleven hours each day. Your inquirer desires to know if this is a violation of the 54-hour law.

By the amendment of 1915, same being Act 225 of the session of 1915, section 9 of the so-called 54-hour law was amended so as to forbid the employment of females in "any office or restaurant for a period longer than an average of nine hours a day, or 54 hours in any week, or more than ten hours in any one day."

According to the facts stated in your communication, this telephone operator is continuously employed eleven hours out of each twenty-four and such employment would, therefore, be a plain violation of the statute.

Very respectfully,

GRANT FELLOWS,

Attorney General.

G-v-O

GAME AND FISH LAWS. MICHIGAN FISH COMMISSION. The angler's license fund cannot be used for the purchase of lands by the Fish Commission.

November 9, 1915.

Mr. Fred L. Postal, Michigan Fish Commission, Detroit, Mich.:

Dear Sir—Your communication of recent date requesting an opinion from this Department received. You wish to know if the Fish Commission may purchase lands for constructing ponds thereon for the propagation of fish, the payment of the land to be made partly from a specific fund and the remainder from the proceeds from the "angler's license fund." The last half of section 3 of Act 263 of the Public Acts of 1915 provides that the State Treasurer shall place all moneys received from such license fees to the credit of a fund to be known as the angler's license fund, which shall be used exclusively for the propagation and distribution of fish for the purpose of stocking the waters of the State under the authority and direction of the State Board of Fish Commissioners.

The legislature has always made specific appropriations for the purchase of lands by the Commission. I, therefore, am of the opinion that the above section limits the use of the money in the fund for the propagation and distribution of fish for the purpose of stocking the waters of the State, and that the money cannot be used from the angler's license fund for the purchase of lands by the Commission.

Very respectfully,

GRANT FELLOWS,

Attorney General.

M-v-O

TOWNSHIP LAW. A township officer who resides in territory that is detached from the Township must be regarded as having vacated his office.

November 9, 1915.

Mr. Frank Vignoe, Greenfield, Michigan:

Dear Sir—I am in receipt of your letter of the 4th inst. in which you state that at a special election held on November 2nd a part of the territory of Greenfield Township was detached therefrom and attached to the City of Detroit. It appears that you have been the Supervisor of Greenfield Township and that you reside in that portion of the territory thereof that had been detached. The question at issue is whether or not you must be deemed to have vacated said office because of this change.

Section 1155 of the Compiled Laws of 1897 has reference to the existing of vacancies in township offices. In accordance therewith if any township officer ceases to be an inhabitant of the Township from which he has been elected or appointed or within which the duties of his office are required to be discharged, the particular office must thereupon be regarded as vacated. In the instance that you have stated, therefore, it must necessarily be deemed to follow from the provisions of the statute that you have vacated the office of Supervisor inasmuch as you are no longer a resident of Greenfield Township. In other words, the detaching of the territory in which you reside from the Township must be regarded as having the same legal effect as would your removal from the Township. I am constrained to the opinion that under this statute of the State no conclusion other than as suggested can be reached.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

POOR LAW. A person who is incompetent to earn a livelihood does not gain a settlement in a county by being supported therein by relatives for more than a year.

November 9, 1915.

Mr. C. W. Dunton, Prosecuting Attorney, Manistique, Michigan:

Dear Sir—This department is in receipt of a letter from Mr. H. G. Neville, one of the Superintendents of the Poor of your County, stating that you have requested him to ask the opinion of this department with reference to a certain situation that has arisen affecting your County. It appears from the statement of facts submitted that a certain resident of Schoolcraft County was admitted to the County Infirmary on the second of January, 1913. In August of the same year said person went to Wayne County where he was cared for by a relative until the first of April, 1915. On the latter date application for admission to the Infirmary of Wayne County was made. Thereupon you were notified by the Superintendents of the Poor in said County and were requested to take charge of the person referred to on the assumption that Schoolcraft County was chargeable with his care. It further appears that the

request was complied with, and that the pauper is now an inmate of the Schoolcraft County Infirmary. The question arises in view of these facts as to whether Wayne County or Schoolcraft County is, as a matter of law, properly chargeable with the care and maintenance of this person.

It occurs to me that Section 1 of Act 72 of the Public Acts of 1907 is decisive of the question. It is therein provided:

"Any poor person who is incompetent to earn a livelihood at the time of such person's entry into any county in this State, or becomes so incompetent within one year from the time of such entry, shall not be entitled to admission into any of the State asylums or county asylums or almshouses at the expense of the State or county or to receive any public relief of any nature, when the name of the County or State from whence said person came can be ascertained, excepting such temporary care or relief as such person may need pending his return, as hereinafter provided, to the county where he was last continuously settled for one year."

I assume that there is no question of any kind but that the party in question had a settlement in Schoolcraft County at the time that he left there in August, 1913. The question therefore narrows itself down to the proposition as to whether or not the circumstances of his residence in Wayne County were such as to entitle him to claim a settlement therein within the meaning of the statute. The facts stated would seem to negative the idea that he was competent to earn a livelihood at the time when he went to the latter county. For sometime previous to his taking up his residence with his relative he had been cared for by Schoolcraft County. I infer that during his residence in Wayne he was, as a matter of fact, a charge upon his relative. If such was the case and if, as seems to be a logical deduction, he was not able to earn a livelihood when he went to Wayne County the conclusion must necessarily follow that he did not gain a settlement there. I would call your attention upon the matter at issue to the cases of *In Re Woodcock*, 123 Mich. 369; and *Moden vs. Superintendents of the Poor*, 183 Mich. 120. These decisions seem to indicate the construction that the Supreme Court has placed upon the statutory provisions relating to the acquisition of a settlement within the meaning of the laws governing the case of indigent persons. In view of these decisions and the express language of the statute, it is my opinion that under the statement of facts submitted, Schoolcraft County is liable for the support of the person to whom your inquiry relates.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

FIRE MARSHAL LAW. Under the amendment of 1915, the act does not apply to exhibitions given for certain purposes.

November 10, 1915.

Hon. Milo D. Campbell, Coldwater, Mich.:

Dear Sir—I have before me your letter of the 8th instant in which you say that the Masonic Temple at Coldwater is to be opened with several attractions on the 29th of this month. It is desired, among other things, to give an exhibition of moving pictures at each entertainment. As I understand the situation the room in which the pictures are to be shown is on the second floor of the building. The question, therefore, arises as to whether or not the State law relative to moving pictures shows and theatres will be in any way violated. You have asked that I give you my views upon the matter.

Section 4 of the statute referred to, Act 257 of the Public Acts of 1913, required that the audience room in which moving picture exhibitions are given shall be on the first or main floor of the building. Sections 1 and 15 of this act were amended at the last session of the legislature by Act 173 of the Public Acts of 1915. Section 4, however, was not changed and as decided by the Supreme Court in *Jewell Theatre Co. v. State Fire Marshal*, 178 Mich. 399, said section is to be regarded as valid. It must be assumed accordingly that an ordinary moving picture exhibition may not be given other than on the first floor of the building.

Section 1 of the act was, however, amended by inserting therein the following proviso:

“This act shall not apply to moving picture exhibitions given solely for religious, benevolent, educational and mechanical and scientific demonstrative purposes, when in the giving of such exhibitions there is used only a special sized moving picture machine constructed for the sole use of non-inflammable films of such size and perforations that standard films cannot be operated thereon.”

Quite possibly this proviso is the modification of the requirements of the statute of 1913 to which you have reference. It would seem that the amended act cannot be construed as authorizing the holding of any moving picture exhibition on the second floor of the building unless such exhibition is given under the conditions and for one of the purposes suggested in this proviso. If your proposed entertainment can be so regarded then, of course, the statute does not apply.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

OIL INSPECTORS. Fees for inspecting illuminating oil should be based on the actual quantity inspected expressed in barrels on the basis of 50 gallons to the barrel.

November 10, 1915.

Hon. R. E. Barron, State Oil Inspector, Howell, Michigan:

Dear Sir—You have asked that I give you my views as to the construction to be placed on certain provisions of section 3 of Act 26 of the Public Acts of 1899, as amended. The particular clause to which attention is directed has reference to the fee to be charged by an inspector to cover the inspection of illuminating oil. The statute prescribed certain amounts, varying with the number of barrels examined, "for each and every barrel of any less than 50 gallons each." It appears that many barrels contain more than 50 gallons. The precise point at issue is whether or not the fee is to be computed with reference to the number of gallons in the barrel, that is, by way of illustration, if a larger fee can be charged for inspecting a barrel containing 60 gallons than inspecting one containing but 50 gallons. It occurs to me that the language used in the act is to be construed as fixing a unit as to quantity, by which the amount of the fees to be charged for inspection may be determined. Stated somewhat differently, it seems to me that the language of the statute indicates that the legislature intended that a quantity of fifty gallons should be regarded as a barrel. If any other view is adopted, for example, if we regard the provision as requiring the inspection to be made of each barrel for the fee prescribed without reference to the number of gallons contained in the barrel, a somewhat peculiar situation would be presented. Such a literal interpretation would necessarily lead to the conclusion that no fee at all may be charged for inspecting a barrel containing less than 50 gallons. It can scarcely be presumed, I believe, that the legislature intended any such result. Rather, as suggested, I believe that the purposes of the reference to the 50 gallons was to establish a unit and the actual quantity of oil inspected, together with the fees therefor is to be determined in accordance with such unit. The rule is fundamental that an enactment of this nature is to be so construed as to carry out the intention of the legislature and courts will interpret particular language to accord with the manifest purpose of the legislative enactment rather than giving to particular words or expressions the meaning that they might possess standing alone. It is my opinion, therefore, that the fees for inspecting a number of barrels of illuminating oil, containing more than 50 gallons each, are to be determined in accordance with the actual quantity of oil inspected, the same being expressed in barrels on the basis of 50 gallons to each barrel.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

SCHOOL TEXTBOOKS. A wholesale dealer who sells to a retailer at one-sixth off the usual list price instead of at the lowest wholesale price does not violate the conditions of his bond, but the retailer may not sell at more than 15% advance of the wholesale price as shown by the statement filed with the State Supt.

November 11, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing, Michigan:

Dear Sir—Act 315 of the Public Acts of 1913 requires that persons or companies desiring to sell school text books in this State shall file with the Superintendent of Public Instruction a certain statement “of the usual list price, the lowest wholesale price and the lowest exchange price at which said book is sold or exchanged * * *” It is further required that a bond be filed containing certain specified conditions. In case of a breach of such conditions, action could be brought thereon to recover the amount of the obligation. It appears from your letter of this date that a certain book company has made a sale to a retail dealer of a certain consignment of books at one-sixth of the usual list price instead of making such sale at the lowest wholesale price as shown by his sworn statement filed with you. The question is raised as to whether or not such sale can be regarded as a violation of the act referred to.

It does not occur to me that the transaction can be said to violate any of the conditions required to be set forth in the bond. Such being the case, an action for the penalty thereof could not be maintained. It is possible that it was the intention of the legislature that sales should be made by wholesale companies to retail dealers at the so-called “lowest wholesale price” but no specific requirement to that effect was included in the statute, nor was such a condition prescribed for the bond. A retail dealer must, however, observe the requirements of section 6 and may not in consequence sell the books at more than fifteen per cent above the wholesale price as shown by the statement filed by the company. I infer from your inquiry that the usual list price with a discount of one-sixth therefrom is more than the lowest wholesale price. However, this may be the retail dealer is bound by the lowest wholesale price in selling the textbooks.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

MOTOR VEHICLE LAW. It is optional with the dealer to register each individual car or take out a general distinctive number.

November 15, 1915.

Hon. Coleman C. Vaughan, Secretary of State, Lansing, Michigan:

Dear Sir—You have asked that I give you my views upon the question of law suggested by the following statement and inquiry, which has been submitted to you:

"We have several parties in this place that are running a curb-stone agency, that is, they have the agency for different makes of cars and are selling same but still do not run a garage. Can you tell us if these parties are supposed to have a dealer's license and pay a license of fifty dollars like other parties who own garages, or are they exempt? We feel that if they are selling cars they should have a dealer's license and we would be pleased to have you advise us on the matter."

Section 4 of Act 318 of the Public Acts of 1909 makes provision for the obtaining of a general distinctive number by any manufacturer of motor vehicles, or any dealer therein, for all motor vehicles owned or controlled by such manufacturer or dealer. The conditions under which such registration may be permitted are set forth in the statute. It will be noted that the provision referred to is wholly permissive, that is, a dealer instead of taking advantage thereof may register each motor vehicle that he owns or controls. The motor vehicle law enacted at the last session of the legislature, which will become operative on the 1st of January next, contains a similar clause with reference to manufacturers and dealers, the observance of which, as in the case of the act now in force, is wholly optional. I do not think that it is material whether or not a dealer maintains a garage in connection with his business of buying and selling motor vehicles. Whether he does or does not, it rests with him to say whether he will cause each motor vehicle that he operates upon the highways to be registered, or whether he will take out a "general distinct number for all such motor vehicles." One who merely takes orders for cars and does not operate the same upon the public highways cannot be required, under the motor vehicle law, to register each car sold through him. The application of the Act of 1909 is limited to "motor vehicles operated upon the public highways" and a similar limitation is found in the title of Act 302 of the Public Acts of 1915. Consequently, a motor vehicle that is not so operated by the dealer does not come within the purview of the statute and for purposes of taxation it is to be regarded in the same manner as other personal property. However, any dealer whether maintaining a garage or not, who controls any number of motor vehicles and operates the same, or causes them to be operated on the public highways, must either register each machine so controlled and operated, or must procure the general number in accordance with the permissive clause of the statute above referred to.

Trusting that these suggestions will indicate my views upon the matter, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

CONSTABLES. May not serve criminal warrants outside of their County.

November 15, 1915.

Hon. William R. Oates, State Game, Fish and Forest Fire Department,
Lansing, Michigan:

Dear Sir—You have recently requested the views of this department as to whether or not a constable may serve criminal warrants outside of the county in which such officer lives. It appears that the question has arisen with respect to the right of a constable in one of the Townships of Livingston County to serve warrants in Wayne County upon persons who are charged with violations of the game law of this State.

Section 2367 of the Compiled Laws of 1897 provides that "any constable may serve any writ, process or order lawfully directed to him, in any township in his county." The letter of the statute clearly limits the authority of the constable to the county in which his township is situated. The question that you have raised would seem to be answered fully by the decision of the Supreme Court of this State, in *People vs. Burt*, 51 Mich. 199. It appears from the facts of the case that a certain constable of Ingham County crossed the line into Livingston County and attempted to act there in an official capacity. In commenting on the situation the Supreme Court, speaking through Mr. Justice Campbell, declared that the officer "when acting out of his own County, was not vested with official character." As suggested, this decision must be viewed as controlling upon the proposition. I am, therefore, constrained to advise you that the officer to whom you refer may not serve criminal warrants outside of his county.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

MICHIGAN SCHOOL FOR THE DEAF. A child who is so deficient mentally as to be unable to profit by the instruction offered need not be retained.

November 16, 1915.

Hon. Luther L. Wright, Supt., Michigan School for the Deaf, Flint,
Michigan:

Dear Sir—You have asked that I give you my views as to whether or not the Board of Trustees of your Institution may return to his parents as incapable of receiving instruction, a certain feeble minded deaf child. It appears that such child has been in the Institution a sufficient length of time so that there is no question as to his mental condition.

Section 2004 of the Compiled Laws of 1897 provides for the admission of deaf and partially deaf persons between the ages of seven and twenty-one years who are prevented because of defective hearing from receiving instruction in the common schools. It is further suggested that such pupils may remain in the Institution "not to exceed thirteen years, in the discretion of the Board;" and such provisions with reference to the receiving of pupils are made subject to the condition that those who

are admitted shall be "in suitable condition of mind and body to receive instruction." It will be noted from the provisions of this section that it was not the intention of the Legislature that any child should be received in the Institution unless such child is capable of receiving the instruction that is offered, and it will be further noted that the Board of Trustees is invested with discretion as to the length of time that each pupil shall be retained. Construing these various provisions together it occurs to me that express authority is conferred by the statute on your Board to send back to his proper guardian any child who is in the condition suggested by your inquiry. It is indicated by various provisions of the legislative enactment providing for the establishment and maintenance of the School for the Deaf that it was intended that it should in a way be supplemental to the educational system of the State in that it should afford means of instruction to children of proper mentality and suitable physical condition who may not profit by the public school system solely because of defective hearing. Bearing this purpose in mind there clearly can be no chance for any question as to the authority of the Board of Trustees to refuse to admit a child who is weak mentally, or to refuse to keep longer within the Institution a pupil who has clearly demonstrated inability to profit by the instruction.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

SCHOOL LAW. The County Commissioner of Schools may not compel the Board of Supervisors to pay office rental.

November 16, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Capitol:

Dear Sir—I beg to acknowledge receipt of your letter of the 13th inst. in which you request my views upon the following inquiries:

"Can the county commissioner of schools compel the board of supervisors to pay office rent if the commissioner has her office in some other building than the court house? Supposing the board of supervisors fit up a room in the court house for the county commissioner of schools and she deems this unsuitable for her work, can she select offices in some other building and compel the board of supervisors to pay for it?"

Section 2454 of the Compiled Laws of 1897 declares that "each organized county shall at its own cost and expense provide at the county seat thereof a suitable Court House, and a suitable and sufficient jail and fire-proof offices, and all other necessary public buildings, and keep the same in good repair." Undoubtedly it was the intention of the Legislature that the duty imposed by this section would be performed, and that suitable offices for the different officials of the County, including the County Commissioner of Schools would be provided. I am impressed, however, that the County Commissioner is not given the power to charge the County with office rental without the approval of the Board of

Supervisors. Section 4817 of the Compiled Laws of 1897, as amended, points out the specific items of expense that may be incurred by the Commissioner and for the payment of which the County may be held liable. It is significant to note that the law making body of the State has not seen fit to include in the list of items for which such expenses may be incurred, the item of office rental. Undoubtedly it was presumed that proper accommodations would be furnished by the County in the ordinary manner. Such being the case, I am constrained to the opinion that a County Commissioner of Schools may not take the action suggested by our inquiries.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

MEDICAL LAW. The State Board may not provide for the certification and endorsement of specialists in various lines of practice.

November 16, 1915.

F. C. Warnshuis, M. D., Grand Rapids, Michigan:

My dear Sir—You have recently requested the views of this Department upon the following questions:

“1st. Does the act that created the State Board of Registration in Medicine empower it to make new and additional laws of administration whereby it may establish a department or feature with the purpose of certifying to and endorsing recognized practitioners of the State as specialists in certain branches of the practice of medicine and surgery?

2nd. Does the act authorize or give the Board the power of establishing qualifications for specialists in the field of medicine and surgery and permit the Board to publicly announce to the people of Michigan that such and such requirements are deemed essential in order that an individual may term himself a specialist?”

I am impressed from an examination of the statute referred to that both of your inquiries must be answered in the negative. No express power to adopt administrative rules and regulations in the discretion of the Board is conferred by the legislative enactment, and it does not seem to me that such power can be implied except in connection with the performance of specific duties that are vested in the Board. To state the proposition somewhat differently: The Act creating the State Board of Registration in Medicine confers on such Board certain definite powers and duties. Such authority as is exercised must have reference to the exercise of such powers or the performance of such duties, and we can not extend the scope of the statute beyond the obvious intention of the Legislature, as indicated by the provisions thereof. As I view the matter, the taking of such action as is suggested by your questions involves, not the exercise of authority incidental to the performance of a duty vested in the Board by the statute, but rather the extending of the

Board's authority in such manner as to embrace a proposition not contemplated by the Legislature. In its present form, the statute by which your Board is governed makes no reference to specialists in the various branches of medicine and surgery. Rather the idea seems to be that those who are entitled to registration, other than as provided for in the third subdivision of section 3, shall stand on the same basis. I am constrained to the opinion, therefore, that your Board would not be acting within the scope of the Act creating it in taking action to certify or otherwise endorse physicians who wish to hold themselves forth as specialists. For similar reasons it would not be competent for your Board to prescribe qualifications that specialists must have in order to use such designation; nor may the Board collect a fee for any such certificate. If it is deemed desirable that action along this line should be taken I believe that it will be necessary to amend the general Medical Law of the State in order to authorize your Board to proceed.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

BUILDING AND LOAN ASSOCIATIONS. May provide by by-law for a different rate of interest on full paid stock than on installment stock.

November 16, 1915.

Hon. Coleman C. Vaughan, Secretary of State, Lansing, Michigan:

Dear Sir—You have recently requested the advice of this department as to whether or not a building and loan association may issue paid up stock drawing a different rate of dividend than that which is paid on so-called installment stock. It appears from the correspondence submitted with your inquiry that some associations in the State are at the present time paying such increased interest.

Section 24 of the building and loan act provides for the payment of dividends in the following clause:

“After providing for the expenses of the association, and the reserve fund as aforesaid, the residue of such earnings shall be transferred and apportioned to the credit of shareholders as the association by its by-laws shall provide.”

It will be noted that the by-laws of the association are expected by the Legislature to make provision as to the manner of the payments of dividends. The rate of interest to be paid may therefore be determined by the association. Construing this provision in connection with the general authority to amend the articles of association or by-laws that is granted in section five, it would seem to leave no question as to the matter. It is not required in the act that paid up stock and installment stock shall bear interest at any given rate or at the same rate; nor does it seem to me that any such requirement can be implied from the language that the legislature has used. Such being the case, it would seem that a by-law providing a different rate of interest in the one case from that which is paid in the other would violate neither the letter nor the

spirit of the statute. Not being inconsistent with the State law, the conclusion must follow that such a by-law is within that class which, under the specific provisions of section five, the association is empowered to adopt.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-g-O

STATUTES. GAME AND FISH LAW. Act 200 of 1907 was not expressly repealed by Act 236 of 1915 but was superseded thereby.

November 16, 1915.

Hon. Edgar A. Planck, Union, Michigan:

My dear Senator—I note from your letter of the 15th instat that the netting of ciscoes is regulated in certain townships in your county by Act 200 of the Public Acts of 1907, entitled "An Act to provide for the lawful taking of Cisco fish in the waters of certain lakes in Cass County." At the last session of the legislature Act 236 of the Public Acts of 1915 was passed for the purpose, as suggested in its title, of protecting fish, and regulating the manner of taking thereof in the inland waters of this State. In the body of the measure, the expression "inland waters" is declared to include all the waters within the jurisdiction of the State except Lakes Michigan, Superior, Huron, St. Clair and Erie, their connecting waters and the bays thereof. The provisions of this general law with reference to the use of nets are inconsistent with Act 200 of 1907. The latter measure being limited in its application to certain townships only of one county, must be regarded as a local act, while the statute of 1915 that is involved is, of course, a public act. In view of this situation the question arises as to whether or not the act of 1907 is repealed or superseded by Act 236 of 1915. You have asked that I give you my views upon the matter.

It has been my interpretation of the provisions of the Constitution of the State relating to the enactment of local measures that a local act may not be expressly repealed except with a referendum to the electors of the district affected by the particular measure. It does not occur to me, however, that the existence of a local act affecting a particular locality in the State can be given the effect of inhibiting the legislature from enacting a general law covering the same subject that shall be applicable in all the legislative jurisdiction, subject, of course, to the condition that the legislative intent as to the scope of the general enactment shall be made clear. Re-stating the proposition with reference to the particular situation suggested by your inquiry; I do not think that the fact that the taking of fish in the waters of certain townships in Cass County was provided for and regulated by the local act of 1907, above cited, deprived the legislature of the right to pass a general measure relative to the taking of fish in all of the inland waters of this State that should be applicable to said townships as well as to the rest of the legislative jurisdiction to which the general act of 1915 in express terms applies.

This brings us to the question as to the intention of the legislature in enacting Act 236 of 1915. An examination of the provisions of the Act renders unavoidable the conclusion that it was intended that all of the inland waters of the State should be affected thereby except as expressly excluded. The repealing clause which is found in section 14 leaves no chance for question upon this phase of the matter. It is therein expressly declared:

"All acts or parts of acts whether *general or local* which conflict with the provisions of this act are hereby repealed."

While I do not think that it was competent for the legislature, as before suggested, to expressly repeal a local act without a referendum, it is my position that local measures conflicting with the general enactment in question are superseded thereby. In other words, the operation of the public act in all sections of the State to which it applies is not affected by the existence of a prior local act affecting any particular section. It is my opinion accordingly that while Act 200 of 1907 cannot be regarded as expressly repealed by Act 236 of 1915, it is to be deemed superseded by such general act.

With kind personal regards, I am,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

INCOMPATIBILITY. Township treasurer may not serve as member of the township board.

PROSECUTING ATTORNEY should not act as counsel for private parties after advising on the correctness of the action of county officials.

November 17, 1915.

Mr. C. H. W. Snyder, Prosecuting Attorney, Mio, Mich.:

Dear Sir—In reply to your letter of the 15th instant, I would say that it has been the holding of this Department that the offices of member of the township board and township treasurer are incompatible and therefore may not be held simultaneously by one person. This holding is based upon the statutory duties imposed upon the township board and upon the treasurer, especially with reference to the annual settlement, the purpose of which is to place a check upon the treasurer. Generally speaking, however, I do not think that the office of justice of the peace can be deemed incompatible with other township offices. Neither do I think that any rule of public policy would be violated by permitting a justice to hold office under the municipal charter.

As to the duty of the prosecutor to advise the county commissioner, I would call your attention to section 2558 of the Compiled Laws of 1897, which imposes upon the prosecutor the obligation to give his opinion to any civil officer of the State or County in matters relating to the performance of their official duties. Doubtless this section is broad enough

to entitle the county commissioner of schools to seek legal advice from his prosecuting attorney in official matters.

As to whether or not it would be proper for a prosecutor to act as attorney for a teacher whose certificate is sought to be annulled must depend quite largely upon the facts of the particular case. Generally speaking, however, it seems to me that the claims and interests of such teacher must be squarely opposed to the position taken by the county board of school examiners, of which board the prosecutor is the official legal adviser. Under such circumstances, it would seem to be scarcely proper for a prosecutor to accept such a retainer as you suggest inasmuch as the probable result would be to render him incapable of performing his official duties as such adviser and might as a result cause him a certain amount of embarrassment.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

TAXATION. The bond and interest tax and the soldiers' relief tax may be included on the assessment roll in the column headed "county taxes" and the county road tax should be put in the column "highway taxes."

November 18, 1915.

Mr. Ray E. Bostick, Prosecuting Attorney, Cadillac, Mich.:

Dear Sir—Section 39 of the general tax law has reference to the preparation of the assessment roll and directs that the various taxes authorized by law shall be entered thereon in separate columns. School taxes and the one-mill tax are directed to be placed in one column, highway taxes in another, township taxes in another, county taxes in another and if other taxes are required to be raised, they must be placed in separate columns. In view of this section you have asked my opinion as to whether "the bond and interest tax, the county road tax and the soldiers' relief tax" must be placed in one column on the roll, or if it is necessary to the validity thereof that all must be placed in separate columns.

I assume that the bond and interest tax to which you refer is one levied for county purposes and that in consequence, it may be regarded as a county tax to be placed in the same column as other county taxes. Likewise, the soldiers' relief tax, which, I assume, is levied pursuant to Act 214 of the Public Acts of 1899, is to be viewed as a county tax. It occurs to me that the statute should be regarded as permitting the inclusion in the one column of such taxes as are assessed for county purposes under and by virtue of the general laws of the State. I do not think that the placing of either of said taxes in a separate column would invalidate the roll. However, as suggested, I do not construe the statute as requiring that they be so placed.

The county road tax is, in my opinion, required to be placed in the column headed "highway taxes," or in a separate column headed "county road fund." The legislature has seen fit to require that taxes levied for the construction and maintenance of highways should be carried on

the rolls separate and apart from other township or county taxes. I call your attention upon this proposition to *Case v. Beam*, 16 Mich. 12-30. See also *Silsbee v. Stockle*, 44 Mich, 561.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

PERJURY. False swearing as to material fact on question of issuing warrant for complaint taken may constitute.

November 18, 1915.

Mr. Herman Dehnke, Prosecuting Attorney, Harrisville, Mich.:

Dear Sir—You have recently requested my views as to whether or not a prosecution for the crime of perjury may be predicated upon a statement of facts submitted with your inquiry. It appears that a short time since a complaint was made before a justice of the peace of your county charging a certain party with a violation of the local option law. After the taking of the complaint by the justice and before the issuance of a warrant based thereon, a witness was brought before the justice and was examined under oath concerning matters material to the charge. It is now claimed that statements made by this witness were false, and that such false statements were material. The point at issue is whether or not the charge of perjury will lie under the circumstances.

The witness was, it appears, called pursuant to section 11839 of the Compiled Laws of 1897, which provides as follows:

“Whenever complaint shall be made to any such magistrate that a criminal offense not cognizable by a justice of the peace has been committed, he shall examine on oath the complainant and any witnesses who may be produced by him.”

In the instant case, it appears that the complaint made was within the purview of this section and that as a matter of fact the witness was actually brought in to be examined by the justice in order that the latter might determine whether or not a warrant should issue. Whether such witness came voluntarily or in response to a subpoena is, as I view the matter, immaterial. In either event there can be no question as to the propriety or legality of this examination in view of the matter that was pending before the justice.

Perjury under the statutes of this State is defined by section 11306 of the Compiled Laws of 1897 in the following terms:

“If any person of whom an oath shall be required by law shall willfully swear falsely in regard to any matter or thing respecting which such oath is authorized or required, such person shall be deemed guilty of perjury and shall be punished by imprisonment in the State Prison as provided in the preceding section.”

The Supreme Court in the case of *People v. Fox*, 25 Mich. 482, speaking through Justice Cooley, indicated that three essential factors must

obtain in order to furnish a proper basis for a prosecution under this statute: First, an oath authorized by law; Second, an issue or charge concerning which the false statement was made is material; and Third, an actual false statement. In the case of *People v. Titmus*, 102 Mich. 318, to which you call attention, the first two factors at least were absent, that is, the oath administered was regarded by the court as unauthorized and there was in fact no issue or cause pending. It appears that in said case a witness was brought before a justice, was sworn, and gave testimony alleged to be false before any complaint had actually been made, that is, the respondent had not himself gone before the justice for the purpose of making a complaint nor had anyone else done so formally.

It occurs to me that the situation that has arisen in your county is altogether different from the facts indicated by the opinion of the court in the *Titmus* case. As suggested by your statement of facts, complaint had actually been made before the justice of the peace of your county charging a violation of the local option law. It was thereupon necessary that the justice determine whether or not there was probable cause to believe that the accused was guilty of the offense. In other words, the justice was forced to decide the question as to whether or not a warrant should issue. Under such circumstances, he was empowered to examine under oath witnesses other than the complainant who might be brought before him. The oath that was administered to the witness in the case stated was expressly authorized by the statute and, as suggested, there was a cause or issue pending. The essential facts that the court in the *Titmus* case found to be lacking were therefore both present in this case. It seems to me, therefore, that the case is brought within the definition of perjury as laid down in the statute above quoted and that, assuming the falsity and the materiality of the statements of fact made by the witness, a prosecution against him under the statute in question will lie. I wish to direct your attention also to the case of *People v. McCaffrey*, 75 Mich. 115, where it was held that one who swears to a bill of complaint in a divorce case knowing material allegations of fact therein to be false is guilty of perjury within the statutory definition.

Trusting that these suggestions will indicate my views upon the matter, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

INDETERMINATE SENTENCE LAW. A sentence of not more than life nor less than a stated number of years must be regarded as a life sentence.

November 18, 1915.

Hon. Otis Fuller, Warden, Michigan Reformatory, Ionia, Michigan:

Dear Sir—I have at hand your request for a copy of the decision of the Supreme Court in the case of *In Re Hamilton*. The opinion was printed in the *Detroit Legal News*, issue of Nov. 13th, and I am sending

you under separate cover a copy of that issue. You will find the case reported beginning on page 943.

You have also enclosed original commitments in cases Nos. 7154, 7866 and 8110 and have asked my views as to the construction to be given the sentences set forth therein. In each instance, it appears that a maximum of life has been given with a minimum of a year or a period of years together with a recommendation that the defendant serve a maximum term of years. Thus in No. 7866, the sentence reads that the period of confinement be for "not less than one year and not more than the remainder of his natural life from and including this day, and the court recommends a maximum term of three years." In the Hamilton case as appears from the opinion of the court, the judgment and commitment read that said Hamilton should be confined for a period of "not less than ten years from and including this day and the judge thereupon did recommend and state that in his judgment the proper maximum penalty would be the term of his natural life as fixed by the statute." The decision appears to have been based upon the fact that the recommendation in the sentence could not be regarded as controlling and that in consequence the only sentence imposed was for a period of ten years which accordingly was to be regarded as a maximum. Obviously this commitment was materially different from any of those submitted by you. In each of the latter the maximum term of life is clearly expressed, rather than being stated in the form of a recommendation. In each case also the court might have imposed a sentence of imprisonment for life, in which event, as suggested, by the holding of the court in *People v. Vitali*, 156 Mich. 370, the fixing of a minimum term would have been uncalled for and therefore improper. It would seem to follow from certain language used in the opinion in *Re Richards*, 150 Mich. 421, that the fixing of the maximum term of imprisonment is the only essential feature of the sentence under the indeterminate sentence law. It was there stated:

"The prisoner was entitled to have the decision of the judge upon the maximum, and a minimum fixed which should not exceed half of it, not a minimum fixed and a maximum that should not be less than double the minimum. Such is the language of the statute."

Applying the rule thus suggested in the interpretation of the sentences contained in the commitments submitted, the conclusion would seem to be unavoidable that it was the duty of the court primarily to fix the maximum. This was, in each sentence, actually done, that is, a maximum of life was definitely imposed. Thereupon the naming of a minimum became, as before suggested, improper and hence of no force and effect. I believe, therefore, that each of these sentences must be regarded as a sentence for life. Such penalty was within the discretion of the court to impose, subject, however, to the conditions as suggested in the *Vitali* case and the *Dumas* case, 161 Mich. 45, that "there could be no minimum sentence in case a life sentence were given." The attempt to indicate a minimum must in consequence be regarded as having no effect. In view of the language of the statute and the decisions of

the court, I am constrained to the opinion that we may regard none of these sentences as other than a sentence of imprisonment for life. I am returning herewith the commitments referred to.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

OSTEOPATHY. The board may not be compelled to grant a license to one who does not possess the required preliminary educational requirements.

November 19, 1915.

Dr. Hugh W. Conklin, Secretary, State Board of Osteopathic Registration, Battle Creek, Mich.:

Dear Sir—Your communication of the 17th instant, addressed to the Auditor General, has been referred to this Department for reply. You have asked to be advised as to whether or not your Board can "be forced to grant a license to a person to practice osteopathy in Michigan under the previous practice clause of our law under Act 162 of Public Acts of 1903, amended by Act 305, 1913, when the preliminary education does not equal that set forth in our law for people to take the examination." I note that many applications for registration are being made from persons residing in other states who have been in practice for more than five years, but who have not had the preliminary preparation indicated by the Michigan law.

Under section 2 of the law as amended at the legislative session of 1913, the granting of registration to one who is licensed in another State or to one who has been in the legal practice of osteopathy for five years and who is a graduate of a reputable school of osteopathy, is expressly declared to be discretionary. I call your attention to the last proviso in said section which deals with this matter. Likewise in certain instances where an applicant seeks to take the examination and has had five years or more of practice, the board may accept such practice as the equivalent of the preliminary education that is prescribed, subject, however, to the condition that the particular applicant shall have been located in this State at the time of the passage of the act. It will thus be noted that the waiving of the preliminary education suggested by the statute is in any case discretionary with your Board. Such being the case, you may not, of course, be compelled to grant a license under the conditions suggested by your inquiry.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

MICHIGAN RAILROAD COMMISSION. Act 175 of 1915 does not confer upon the Commission authority to change the location of crossings, etc., within the corporate limits of cities.

November 23, 1915.

Michigan Railroad Commission, Lansing, Michigan:

Attention Mr. Cunningham.

Gentlemen—We are returning herewith files submitted with reference to highway bridge crossing the Michigan Central Railroad tracks in the City of Ypsilanti.

We have gone over the entire files, as well as the statute with reference to this subject matter. It will be noted from an examination of the files that Commissioner Scully, during the year 1913, advised the city authorities of Ypsilanti that the Commission was without jurisdiction in the premises. The only legislation enacted since that time which deals with matters of this kind is Act 175 of the Public Acts of 1915 which is an amendment to the General Highway Law of the State, and particularly section 27 of Chapter 1 of Act 283 of the Public Acts of 1909. It will be noted from an examination of this amended section, on page 295 of the session laws of 1915, that "the Michigan Railroad Commission and the State Highway Commissioner jointly shall have power, when in their judgment they deem it necessary for the safety of the public to change the location of, or abolish any existing crossing of railroads with highways * * *." The practical effect of this amendment, in our judgment, is to confer authority upon the Commission and State Highway Commissioner to grant relief in matters of this kind when the same may occur outside of incorporated cities. We are impressed, however, from an examination of the entire Act that the relief here provided for does not apply to such highways as shall cross or intersect railroads within the corporate limits of cities. We therefore are of the opinion that with respect to the instant matter the Michigan Railroad Commission is without jurisdiction to grant the relief requested.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-pi-O

MOTHERS' PENSION LAW. No specific appropriation for the purpose of creating a fund out of which mothers' pensions may be paid is first necessary in order that the said orders may be drawn by the judge of probate and paid by the county treasurer.

November 23, 1915.

Hon. George C. Bentley, Judge of Probate, Houghton, Mich.:

Dear Sir—We are in receipt of your of the 16th instant wherein you state:

"The authority of the Probate Court to draw orders on the

county treasurer for the payment of pensions is questioned, it being claimed that no orders should be made until the board of supervisors makes an appropriation for the specific purposes of paying pensions."

Your request our opinion as to whether the specific appropriation must first be made by the supervisors or whether the court has authority to draw orders payable out of the general fund without a specific appropriation for such purpose has been made.

In reply, section 7 of Act 228 of the Public Acts of 1913 provides in part as follows:

"* * * that if the mother of such dependent or neglected child is unmarried, or is a widow, or has been deserted by her husband, or if married has been divorced and is poor and unable to properly care and provide for said child, but is otherwise a proper guardian, and it is for the welfare of such child to remain in the custody of its mother, the court may enter an order finding such facts and fixing the amount of money necessary to enable the mother to properly care for such child, such amount not to exceed three dollars a week for each child. Thereupon it shall be the duty of the county treasurer of the county of which such child is a resident to pay from the general fund of such county to such mother at such times as such order may designate, the amount so specified for the care of such dependent or neglected child until the further order of the court. Such order shall not require the approval of the board of supervisors or county auditor, or auditors * * *"

From the language above quoted, we are of the opinion that no specific appropriation is first necessary in order that such orders may be drawn and paid, and that consequently the interpretation that you have placed upon the act, in this respect, is entirely proper.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

RAILROAD COMMISSION. Has no jurisdiction in the matter of railway trains blocking highway crossings in violation of section 22 of Chapter 4 of the Act 198 of 1873 as amended.

November 23, 1915.

Michigan Railroad Commission, Lansing, Michigan:

Attention Mr. Cunningham.

Gentlemen—With reference to the telephone conversation between you and Mr. Crowley today: From your statement it appears that the Ann Arbor Railroad Company has filed with your commission a formal complaint against the Grand Rapids and Indiana Railway Company for blocking a certain crossing in the City of Cadillac in excess of the time prescribed by statute. The circumstances as stated by you are that a

certain G. R. & I. passenger train stops daily at Cadillac for lunch twenty minutes; that in so doing the train stretches across and blocks a certain highway acrossing for a period of twenty minutes each day; that the Ann Arbor Railroad Company have formerly complained to your Commission stating these facts together with the request that you make an order in the premises. You have requested our opinion as to your jurisdiction in matters of this kind.

In reply you are advised that section 22 of Chapter IV of Act 198 of the laws of 1873 as amended, the same being Compiler's Section 224 of the laws relating to railroads, revision of 1913, provides in part as follows:

"* * * and any railroad, corporation or company owning or operating a railroad in this State that shall permit its engines, cars, or trains to obstruct any public street or highway, for a longer period than five minutes at any one time, shall be liable to a penalty for each offense of twenty-five dollars. The penalties provided for each case herein, shall be received in an action to be brought in the name of the people of the state of Michigan by the Prosecuting Attorney of the proper county, in which the offense charged shall have been committed, upon the complaint of the proper authorities of any city, village or township, or of any citizen injured or aggrieved by the violation by any railroad corporation or company, of the provisions of this act in this section contained."

It is apparent from the above that the statute points out the specific procedure in matters of this kind and we are inclined to the opinion that the procedure named is exclusive of any other that might be taken. We would, therefore, say that your Commission would have no jurisdiction to entertain complaints of this nature but that such matters should be taken up and disposed of through the prosecuting attorney's office at Cadillac.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

BONDS,—CERTIFIED PUBLIC ACCOUNTANTS. An obligation executed pursuant to Act 92 of 1905 may not be cancelled by the Secretary of State at the request of the surety.

November 23, 1915.

Hon. Coleman C. Vaughan, Secretary of State, Lansing, Michigan:

Dear Sir—I am advised that you have been requested to cancel a certain bond given by William H. Brook as principal and the Massachusetts Bonding and Insurance Company as surety. The obligation was executed under the provisions of Act 92 of the Public Acts of 1915, the said Brook being a certified public accountant under the provisions of that act. The surety claims that the premium on the bond has not been paid and, therefore, requests that you cancel the obligation and give notification of such action.

The bond itself contains no clause providing for its termination or cancellation under any contingency. As suggested in an opinion given by this Department to Mr. Archibald Broomfield of the present State Board of Accountancy, under date of May 25th, 1915, copy of which has been heretofore handed to you, the continuance of the bond in force under Act 240 of 1913 is incumbent upon the accountant and the cancellation of the bond is a matter with which neither the State Board nor the Secretary of State has any concern.

Rather, as suggested, liability may be terminated only in accordance with the agreement of the parties. If it is the desire of the surety that it be regarded as relieved from any obligation on the undertaking, it is incumbent upon it to present satisfactory evidence to you that the bond has been cancelled. In this respect, I do not think that there is any difference between the provisions of the present law and the corresponding provisions of the Act of 1905 under which the particular obligation in question was given. The Act of 1913 expressly continued in force certificates granted under the earlier act, and such being the case, bonds executed by certified accountants thereunder must likewise be regarded as not affected in any way.

To restate the proposition: the authority to cancel this obligation is not vested in the Secretary of State, nor in any other Department of the State. The rights of principal and surety, as between themselves, are to be determined by their agreement and the surety may relieve itself from further obligation only in accordance with that agreement. No officer or Board of the State is granted authority to make any attempted cancellation on such a request as has been presented to you in this instance. It is quite possible that the Massachusetts Bonding and Insurance Company is entitled to be relieved, but as before stated, it is not entitled to ask that you assume the burden and responsibility of declaring such fact. It might have protected itself in the obligation and it may, of course, take action to do so now.

I am returning herewith the bond in question and the correspondence concerning the same.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

STATE RAILROAD COMMISSION. Has no authority to fix rates for electric lighting where the plant is owned exclusively by the municipality.

November 23, 1915.

Dr. E. B. Pierce, Superintendent, Michigan State Sanatorium, Howell, Michigan:

Dear Sir—I have before me your recent communication in which you ask if there is any State commission before whom you could submit the question of rates for electricity furnished your institution by the City of Howell, the city owning the electric light plant.

Replying to your communication will state that I know of the existence of no such commission. Inasmuch as the statute does not confer

such authority upon the Railroad Commission where the public utility plant is owned exclusively by a municipality.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

EXTRADITION. Application therefor not granted in absence of affirmative showing that the alleged fugitive was in the State of Michigan at the time of the commission of the offense.

November 23, 1915.

Mr. Charles H. McBride, Attorney at Law, Holland, Michigan:

Dear Sir—I have before me your communication of recent date in which you state that one of the employees of the Bush and Lane Company of your city, who is a resident of the State of Kansas, has embezzled about \$3,000 of the company's money. You state that the employee has never been in the State of Michigan and indicate that this money came into his possession in the State of Kansas by reason of his employment and that his default in not turning the money over to the company occurred while said employee was in the State of Kansas. You desire to know whether this man could be extradited upon a warrant issued in the State of Michigan charging him with embezzlement in this state.

Replying to your communication, permit me to say that the embezzlement would be considered to have been committed in the place where the unlawful conversion of the property took place and unless an application for extradition contained an affidavit under oath that the fugitive was in the State of Michigan at the time of the commission of the offense, the application would be denied.

This is in accordance with the former opinion given by this Department on a similar statement of facts.

With best personal regards, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

TRAVELING SALESMAN. A representative or a trading or manufacturing firm located outside of the State who comes into this State and solicits orders for the delivery of goods in the future is not a "transient merchant" under the terms of Act 294 P. A. 1913 as amended.

November 23, 1915.

Mr. Fred H. Haggerson, Prosecuting Attorney, Menominee, Mich.:

Dear Sir—I have before me your communication of recent date in which you state that a certain firm from Milwaukee, Wis., has been sending a man to your city several times each year "to solicit orders for the delivery of goods in the future." You state that this man whom they have sent has a sample room in the hotel at your city and also

drives in a horse and buggy from door to door soliciting orders for goods to be delivered in the future; that he does not sell to the retail trade but entirely to private families. You desire to know whether this is a violation of Act 294 of the Public Acts of 1913, as amended by Act 191 of the Public Acts of 1915.

The amendment of 1915, section 9 thereof, provides that "nothing in this act contained shall be held or construed to affect sales by traveling representatives of regular established jobbers, or of manufacturers selling to the trade by sample for future delivery from their established places of business."

It is apparent that the above quoted exception found in section 9 of the amended act under consideration would bring the party of whom you speak and who is representing the Milwaukee firm by soliciting orders for the delivery of goods in the future, outside of the purview and intendment of the statute.

With best personal regards, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

CHILDREN. As used in Act 274 P. A. 1913 should be construed to mean those of the age of 17 years or under while Act 267 applies to adult persons.

November 23, 1915.

Hon. Lucas M. Miel, Judge of Probate, Stanton, Mich.:

Dear Sir—I have before me your communication of the 19th inst. in which you ask the opinion of this Department as to the age limit at which patients may be sent to the University Hospital under Act 267 of the Public Acts of 1915. Replying to your communication, permit me to say that it has been the holding of this Department that in construing said Act 267 together with Act 274 of the Public Acts of 1913, that under the last mentioned act, which provides for the medical and surgical treatment of children afflicted with a curable malady or deformity, the word "children" used therein should be construed to include those between the ages mentioned in the juvenile law. While the 1915 act, being an act to provide for free hospital service and surgical treatment for adult persons afflicted with a malady or deformity, which may be benefited by hospital treatment should be construed to include all other persons than those included within the purview of the 1913 act.

No doubt it is by virtue of this opinion that the Auditor General's Department considers all persons above the age of seventeen years to come under the provisions of the 1915 Act.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

LAND CONTRACTS. Not entitled to record unless containing certificate of acknowledgment of vendor under the statute.

November 23, 1915.

Mr. A. L. Sayles, Prosecuting Attorney, Newberry, Mich.:

Dear Sir—I have before me your communication of the 20th inst. in which you state that you have rendered an opinion to your register of deeds to the effect that a land contract not acknowledged by the vendors or any one in their behalf is not entitled to record even though the same may be acknowledged by the vendee. You desire to know whether you were right in the above conclusion.

By section 9035 of the Compiled Laws of 1897, it is provided that contracts for the sale of land or any interest therein shall be executed in the presence of two witnesses who shall subscribe their names thereto as such and that after the executing of such contract by the vendor he or they may acknowledge the execution thereof before any judge or commissioner of a court of record or before any notary public or justice of the peace within the State, and the officer taking such acknowledgment shall endorse thereon a certificate of the acknowledgment thereof and the date of making the same under his hand. It is further provided by section 9038 of the Compiled Laws of 1897 that "any contract executed and acknowledged according to the foregoing provisions, shall, with the certificate attached thereto, be entitled to be recorded in the office of the register of deeds of the county where the lands lie, etc."

It is apparent by the two sections above mentioned that you were right in your conclusion and that to entitle the land contract to be recorded in this State it should contain a certificate of acknowledgment by the vendor in accordance with the terms of the statute.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

LAKE BOTTOM LANDS. Public Domain Commission has no authority to grant control of lake bottom land in Lake St. Clair beyond 500 ft. from the shore nor to grant exclusive permission to take material from the lake bottom beyond such distance.

November 29, 1915.

Hon. A. C. Carton, Secretary, Public Domain Commission, Lansing, Mich.:

Dear Sir—Your communication of the 12th instant enclosing file of correspondence from Mr. Guy C. Weed received. You desire my opinion with reference to the matter.

From this correspondence, it appears that Mr. Weed has secured permission from the War Department to fill in a strip of frontage on Belvidere Bay, Lake St. Clair to be 300 ft. wide and to extend into the Bay about 5,000 ft. to the 6 ft. contour line of the Bay. You desire to know

whether Mr. Weed must have the consent of the Public Domain Commission before carrying out this work.

From the maps and charts enclosed, it appears that this fill would be in front of a portion of private claim No. 373 in the shallow part of the Bay and would extend in a northeasterly direction. It is proposed to take the clay, sand, etc., with which to make the fill from that portion of the Bay lying within the deeper water in front of and within the boundaries of the filled land as projected.

It will be seen, therefore, that the proposed fill will rest upon the Lake bottom of a portion of Lake St. Clair, Belvidere Bay being a part of Anchor Bay. This lake bottom, therefore, is the property of the State of Michigan and not of the shore owner. The question would be governed by Act 326 of the Public Acts of 1913 as amended by Act 92 of the Public Acts of 1915.

The permission given by the War Department is only such as is usually given where the rights of navigation may be interfered with and does not obviate the necessity of securing further permission from the Public Domain Commission of this State. The right to fill in this land as proposed by Mr. Weed would, therefore depend upon his right to a lease of the lake bottom and consequently to his right to take material from the lake bottom more than 500 ft. from shore with which to build up the proposed fill.

It does not appear from the correspondence that Mr. Weed has ever made application to lease the lake bottom that he proposes to fill. I am of the opinion that he cannot proceed without first establishing his right to a lease of that portion of the lake bottom and this could only be determined upon a hearing before the Commission as prescribed in the aforementioned act. With regard to the right of Mr. Weed to take material from the lake bottom between the six-foot and the eleven-foot contour with which to make the proposed fill, your attention is called to provisions made in section 27 of the above act, as follows:

"And provided further, that the provisions of this act shall not apply to owners and lessees of such lands fronting upon the lakes St. Clair, Huron and Erie at a greater distance than five hundred feet from the shore line of such lands at low water mark, and the Public Domain Commission shall not by lease, grant or otherwise purport to extend to any owner or lessee of such lands the ownership, use or control of the bed of said lake beyond a distance of five hundred feet from the shore line thereof at low water mark."

It would appear from this provision that the Commission could not grant to Mr. Weed any exclusive right as shore owner or lessee to take sand and gravel from the bottom of Lake St. Clair beyond 500 feet from the shore, and the act does not permit any person to take sand and gravel from Lake St. Clair without the consent of the Commission. This restriction would have a two-fold effect so far as Mr. Weed is concerned,—namely—the Commission could not give him the necessary control over the lake bottom beyond 500 ft. from the shore line to make the proposed fill legal beyond that point; and second, it could not in any event give him exclusive permission to take the material from the lake bot-

tom with which to make the fill where the material is to be taken from a point beyond 500 ft. from the shore line.

I return herewith the correspondence, etc.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-v-O

ELECTION LAWS. The words "this act as used in section 51 of Act 141 of the Public Acts of 1915 amending Act 190 P. A. 1891, refers to the original act as amended. Secretary of State required to publish Act 190 of 1891 as amended together with Act 180 of P. A. of 1877 in a separate pamphlet.

November 29, 1915.

Hon. Coleman C. Vaughan, Secretary of State, Lansing, Michigan:

Dear Sir—Your communication of the 22nd instant received as follows:

"Act 141, P. A. 1915, adds four new sections to the general election laws, numbered 49, 50, 51 and 52.

Section 51 makes it the duty of the Secretary of State 'to have a sufficient number of copies of this Act together with Act 180 of the Public Acts of 1877 printed prior to each regular biennial election in November, to supply a copy to each inspector of election in each township, village and city of this State.'

The same section provides that 'there shall be printed on the fly leaf of each copy of a statement over the name of the Attorney General, calling the particular attention of such inspectors of election to sections 21, 23, 32, 45, 49 and 50 of this Act.'

I respectfully ask your opinion as to the meaning of the expression 'this Act.' Does it refer to the amendatory act 141, or to the entire general election law of which it is amendatory?

Further, must a separate pamphlet, including the general election law and act 180 of the Public Acts of 1877, be published for such distribution, with a statement by the attorney general, or can the general compilation of the election laws, which has been prepared by the secretary of state and includes the two acts in question, be so used?"

In reply thereto would say that the words "this act" as used in section 51, which has been added by the amendment made by Act 141 of the Public Acts of 1915, must be taken, under the rules of statutory construction, to refer to the whole act including amendments thereto. As applied to the particular question, it would mean that the Secretary of State must have a sufficient number of copies of Act 190 of the Public Acts of 1891 together with all amendments thereto printed.

The provision in section 51 with relation to the publication of the separate pamphlets for the use of election officials I think should be construed as requiring the publication only of Act 190 of the Public Acts of 1891 and its amendments and Act 180 of the Public Acts of 1877. It is apparent that the legislature intended such a pamphlet as a matter of convenience for ready reference on election day to avoid the necessity

of searching through a larger pamphlet or the statutes at large. You are, therefore, advised that these two acts should be printed separately from the general pamphlet election laws.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-v-O

PRIVATE EMPLOYMENT AGENCIES. License for an agency is for a particular locality.

December 1, 1915.

Hon. James V. Cunningham, Commissioner of Labor, Lansing, Michigan:

Dear Sir—I have your communication of the 1st inst. in which you request an opinion as to whether or not a license employment agent has the right to operate at any place within the State other than the place designated in his application for license.

In reply thereto would say that the matter is governed by the provisions of Act 301 of the Public Acts of 1913. Section 1 provides as follows:

“No person, firm or corporation in this State shall *open, operate or maintain a private employment* agency where a fee is charged to persons seeking employment, without first obtaining a license for the same from the commissioner of labor, and the fee for such license shall be twenty-five dollars per annum except in cities over two hundred thousand population, where it shall be one hundred dollars per annum. Every license shall be void after the thirty-first day of December of the year in which it was issued. The *form of the license* shall be fixed by the commissioner of labor and it shall be *non-transferable*. The license may be revoked by the commissioner of labor whenever in his judgment, after full hearing, the licensed agency shall have violated any of the provisions of this Act. The commissioner of labor is hereby charged with the enforcement of the terms of this Act and empowered to make such rules or regulations as are consistent with it and aid in its enforcement and he shall direct copies or excerpts of this Act to be kept conspicuously posted in every licensed agency. The commissioner of labor shall turn into the state treasury all fees collected under this Act.”

It is evident from a reading of this whole Act as well as the provisions of Section 1 above quoted that it is contemplated that the license shall be for a particular locality and therefore the obtaining of a license would not authorize or warrant the agent to carry on his agency at any other point.

However, as suggested in your letter, in a particular instance the agent might go to some other point in the State and advertise his business, but he could not conduct an agency at some other point under his license.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

INDIGENT PERSONS. The care of same when a person from one county gains a residence in another county.

December 3, 1915.

Mr. Ralph E. Hughes, Prosecuting Attorney, Suttons Bay, Mich.:

Dear Sir—I have before me yours of the 30th ult. asking for an opinion as to whether your county is liable for the support of an indigent person, who after having gained a residence in your county removed to another county during indigency and refuses to return to your county. I would respectfully refer you to section 1 of Act 72 of the Public Acts of 1907, entitled "An Act to regulate the granting of relief to, and the admission of, certain poor persons to the asylums and alms-houses and to provide for collecting the expense of the temporary care and transportation of such persons and to repeal all acts or parts of acts inconsistent herewith, which said act provides as follows:

"Any poor person who is incompetent to earn a livelihood at time of such person's entry into any county in this State, or becomes so incompetent within one year from the time of such entry, shall not be entitled to admission into any of the State asylums or county asylums or almshouses at the expense of the State or county or to receive any public relief of any nature, when the name of the county or State from whence said person came can be ascertained, excepting such temporary care or relief as such person may need pending his return, as hereinafter provided to the county where he was last continuously settled for one year.

Said Act 72 also further provides for notice to be given the superintendents of the poor of the county from which such person came and in which the indigent person had gained a residence and provides for the deportation of the person back into such county. I am impressed that this act will cover the questions you have before you relative to this matter.

Very respectfully,
GRANT FELLOWS,
Attorney General.

M-v-O

COUNTY POOR HOUSE. BOARD OF SUPERVISORS. Have authority to supervise the purchasing and installing of a furnace at the county poor house.

December 4, 1915.

Mr. J. F. Bowler, Lawyer, Clare, Michigan:

Dear Sir—I am in receipt of your communication of the 29th instant relative to the power of the board of supervisors of your county to appoint a committee from their number to receive bids, purchase and supervise the installation of furnace in your county poor house. You desire to know whether they have this authority or whether the same is vested with the county superintendents of the poor.

The statute confers upon the superintendents of the poor the power and authority to purchase the furniture, implements and materials that shall be necessary for the maintenance of the poor and their employment and labor and to sell and dispose of the proceedings of such labor as they shall deem expedient. The board of supervisors of the county is vested with power and authority and may authorize the board of superintendents to purchase land upon which to erect such buildings and may authorize them to erect thereon one or more such buildings for such purposes. In other words, while the superintendents of the poor have exclusive authority to procure a supply of furniture, implements, provisions and materials that may be necessary for the maintenance and the employment of the poor, the construction, alteration and extensive repairs of buildings for housing and maintaining the poor is vested with the board of supervisors of the county. The installation of a furnace in a building might be considered as an alteration or addition to such building in the sense that when installed the furnace or heating plant from its very nature becomes a part of the building itself. It cannot be considered in the sense of furniture which does not become a part of the realty. Therefore, from the nature of the property, the furnace, when installed, becoming a part of the building itself and attaching permanently to the realty would, in my opinion, fall under the supervision and control of the board of supervisors of the county.

Trusting I have made myself clear in this matter, I am,

Very respectfully,

GRANT FELLOWS,

Attorney General.

G-v-O

RAILROAD COMPANIES. A railroad company organized under Act 35 P. A. 1867 must have a minimum capitalization of \$25,000, of which 25% must be paid in cash by subscribers.

December 6, 1915.

Hon. Coleman C. Vaughan, Secretary of State, Capitol:

Dear Sir—

In Re Garden Bay Railway Company.

I am in receipt of a file of correspondence with reference to the above matter and your oral request for an opinion thereon.

This company was recently organized under Act 35 of the Public Acts of 1867, entitled "An Act to provide for the formation of street railway companies," as amended. This Act is embraced within sections 6434 to 6467 inclusive of the Compiled Laws of 1897. The company has recently attempted to file Articles of Incorporation with your Department and the Articles have been refused because the capital stock is fixed at twenty thousand dollars and for the further reason that no showing has been made as to the payment in cash of twenty-five per cent of the stock subscribed. It further appears from the correspondence that an application was made to the Railroad Commission by the incorporators under Act 144 of the Public Acts of 1909, as amended, for permission to issue stock, etc., and that the Railroad Commission authorized the issuance of twenty thousand dollars in stock. The question raised is that section 4

of the Act under which the company is incorporated, being section 6437 Compiled Laws of 1897, provides that Articles of Association may be filed in the office of the Secretary of State but,

"That such Articles shall not be filed in the office of the Secretary of State, as aforesaid, until stock to the amount of twenty-five thousand dollars has been subscribed thereto, nor until twenty-five per cent of the amount of the stock subscribed, as aforesaid, shall have been actually paid in cash, to the directors named in such Articles, nor until there is annexed thereto an affidavit, made by at least three of the directors named in said Articles, that the amount of stock required by this section, to-wit, twenty-five thousand dollars has been subscribed, and that twenty-five per cent of the amount has been actually paid in."

This proviso did not appear in the original Act but was added by an amendment in 1869.

The incorporators insist, however, that under section 5 of this Act the capital stock may be ten thousand dollars, that section providing, in part, as follows:

"The amount of the capital stock in every such corporation shall be fixed and limited by the stockholders in their Articles of Association, and shall in no case be less than ten thousand dollars, * * *."

It will be noted, however, that this provision was contained in the original Act and the section itself has never been amended. It is in direct conflict with the provision in section 4, as amended. Under the rules of statutory construction that the later provision shall control as between two inconsistent provisions found in the same Act, I am of the opinion that the requirements of section 4 as to the amount of capitalization must control. Hence, it would follow that the minimum capitalization of a company organized under Act 35 of 1867 would be twenty-five thousand dollars of which twenty-five per cent or six thousand two hundred fifty dollars, must be paid in in cash.

The incorporators, however, contend that because of the requirements and provisions of Act 144 of the Public Acts of 1909, as amended, the provisions of section 4 of Act 35 of 1867, as amended, are no longer controlling, and that the Michigan Railroad Commission has authority to fix the amount of the capitalization. Act 144 of the Public Acts of 1909, as last amended by Act 259 of the Public Acts of 1915, is entitled: "An Act to regulate the issuance of stocks, bonds and other evidences of indebtedness by persons, corporations and associations owning, conducting or operating certain public utilities, and to provide a penalty for the violation thereof." Section 1 of this Act, as last amended, provides, in part, as follows:

"Any corporation or association except municipal corporations, organized and existing, or which may hereafter be organized or authorized to do business under the laws of this State, or any lessee or trustee thereof, or any person or persons owning, con-

ducting, managing, operating or controlling any plant or equipment within this State used wholly or in part in the business of transmitting messages by telephone or telegraph, producing or furnishing heat, light, water or mechanical power to the public, directly or indirectly, and any railroad, interurban railroad or other common carrier may *issue* stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of facilities or for the improvement or maintenance of service or for the discharge or lawful refunding of obligations: Provided, and not otherwise, That there shall have been secured from the Michigan Railroad Commission an order authorizing such issue and the amount thereof, and stating that in the opinion of the Commission the use of the capital or property to be acquired to be secured by the issue of such stock, bonds, notes or other evidences of indebtedness, is reasonably required for the purposes of such person, corporation or association * * *."

The Commission is also given the power to impose conditions upon the issuance of such stock, etc., and the section also provides further "that the provisions of this Act shall apply to all stock, shares, bonds or notes issued to or taken by the incorporators, or their agents, assigns or trustees of any such corporation or association in the first instance." A penalty is also provided in the Act for the issuing of stock without authority from the Railroad Commission.

It is apparent that the purpose of the Act as defined in the title, and as provided in the body thereof, is to regulate the issuance of stocks, etc., of any corporation of the classes defined. This Act is in no sense an Act to provide for the incorporation of such companies. It applies as well to individuals as to corporations. As to corporations, each one is undoubtedly left free to incorporate under whatever Act would be appropriate, and there is nothing in Act 144 that would negative the positive requirements of any Act of incorporation. This Act, however, is supplemental to other Acts of incorporation with respect to the manner of issuing stocks, bonds, etc. With respect to the issuance of shares of stocks, while the Railroad Commission is given authority to say how much shall be issued, they are not given authority to say that a corporation may capitalize at less than the amount required by the Act of incorporation.

I am therefore of the opinion that where an Act of incorporation fixes a minimum of capitalization, the Railroad Commission can not authorize a less amount although their consent is required to the issuance of the minimum amount of capital when a minimum is fixed by the Act of incorporation. You are therefore advised that the Articles in this particular instance should not be received in their present form.

Respectfully yours,

GRANT FELLOWS,
Attorney General.

P-pi-O

HUNTING LICENSE. DEER. Self-sealing metal tag must be fixed to the carcass immediately after killing it.

December 6, 1915.

Hon. William R. Oates, Commissioner, State Game, Fish and Forest Fire Department, Lansing, Michigan:

Dear Sir—I have before me your communication of the 20th instant, addressed to your Mr. C. K. Hoyt, asking that he secure the opinion of this Department as to the construction to be given to section 9 of Act 268 of the Public Acts of 1897, as amended.

You specifically state that you desire to know whether that portion of the amended section requiring any person killing a deer to immediately, after killing, attach the self-sealing metal tag or seal containing the number of the license held by such person to some part of such deer in a secure and permanent manner is merely a legal preliminary to shipment of the carcass of such deer, or whether it should be construed as requiring such metal tag to be thus fixed notwithstanding the carcass may be taken to camp and not immediately offered for shipment. In placing a construction upon this portion of the section in question, it becomes essential to inquire into the purpose and object of such a provision.

The legislature of 1915 amended section 17 of Act 275 of the Public Acts of 1911, as amended, which said amendment of 1915 limited the number of deer that may lawfully be killed or captured during the open season in any calendar year to one. The same legislature by Act 249 of the session of 1915 so amended the statute regulating and licensing the use of firearms in the hunting for and killing of deer so as to provide for a self-sealing metal tag, bearing the same number as the license issued, which said self-sealing metal tag was to accompany the license issued to the individual. Section 9 of this act as amended provides that it shall not be lawful for any railroad or express company, or other transportation company to transport any deer or part of a deer from one place to another in this State unless the shipper shall produce his license as provided in the act and shall sign and detach a coupon therefrom and attach the same to the carcass of such deer, or part thereof, offered for shipment in the presence of the shipping agent and provides that no shipping agent of any transportation company shall accept for transportation the carcass of any deer or any part thereof without the aforesaid self-sealing metal tag being securely attached thereto. Said section 9 contains a proviso which requires that "any person killing any deer shall immediately after killing same attach the self-seal metal tag or seal which contains the number of the license held by such person to some part of such deer in a secure and permanent manner * * *"

The apparent object and purpose of the proviso requiring the attachment of the self-sealing metal tag to the carcass of the deer immediately upon the killing of the same was to divest the license of such self-sealing metal tag by compelling it to be fastened securely to the carcass of such deer so as to aid in a more strict enforcement of the statute limiting the number of deer to be killed by such person to one animal. Thus, if the licensee had slaughtered one deer, that being as many as his license

would protect him in killing, the metal tag received with his license and corresponding to the number thereof was intended to be then and there affixed to the carcass of such deer. If the licensee were permitted to carry this self-sealing metal tag about with him until the end of the hunting season, its result upon law enforcement would be apparent and a hunter might slay a deer, take the carcass into camp and with his camp companions devour the same before leaving camp and thus, a great many deer might be slain by huntsmen without any accurate or tangible means of knowing how many deer had been slain by each individual licensee.

The provision of the section providing that the self-sealing metal tag shall be permanently fixed to the carcass at the time it is offered for transportation was apparently intended to serve as a means of identification of the carcass in transit from the point of shipment to its destination, the number thereon corresponding to the number of the license, and thereby readily and easily traced to the individual who shipped the carcass.

Hoping I have made myself clear in this matter and assuring you of my best personal regards, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

STATE BOARD OF EDUCATION. Has no authority to dictate where students attending State Colleges shall room and board.

December 6, 1915.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Capitol:

My Dear Sir—I have before me your communication of the 30th ult. in which you state that the State Board of Education desires an opinion as to whether or not it can legally insist upon students at State Colleges rooming in houses managed only by persons who are members of the "Matrons' Association," and you submit copy of resolution adopted by the Board, which reads as follows:

"The housing and care of the students of the Normal College are of first importance to the welfare of the institution and of the the young people who come to it. Until dormitories are established, the rooming houses approved by the college authorities are for all practical purposes a part of the institution and co-operation between the college and the heads of rooming houses is a prime necessity. The Board therefore authorizes the President of the Normal College to accept as approved rooming houses only those that are managed by persons who show an interest in the work of the institution and a desire to co-operate with the college by becoming members of the matrons' association."

You are advised that the resolution above quoted is of no legal effect or importance whatsoever; neither has the Board authority to dictate

the houses or rooming places at which students are to room or board during their attendance at such college.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

G-pi-O

RESIDENCE—INDIGENT CHILDREN. Indigent children sent to University Hospital under Act 274 of 1913 do not become residents of the City of Ann Arbor so as to charge said City with the expense of burial in case of death.

December 6, 1915.

Mr. Thomas P. Pettitt, Secretary, Board of Superintendents of Poor, Benzonia, Michigan:

My Dear Sir—I am in receipt of your communication of recent date in which you ask advice upon the following statement of facts: You state that last summer a child was sent to the University Hospital at Ann Arbor for treatment under Act 274 of the Public Acts of 1913. After being at the Hospital several weeks the child died of scarlet fever, and you desire to know whether the expense of burying the child should be borne by the city of Ann Arbor or the County from which she was sent to the Hospital.

You are advised that a child sent to the University Hospital at Ann Arbor for treatment under said Act 274, would not be considered a resident of the city of Ann Arbor but would remain a charge against the County from which it was sent. This being true, the County from which this child was sent to the Hospital for treatment would be charged with the expense of burial in case of the child's death.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

G-pi-O

MOTOR VEHICLE LAW. Dealers not permitted to operate one vehicle upon license obtained for another. Must take out dealers' license if operating more than one car.

December 7, 1915.

Hon. Clifford G. Olmsted, Midland, Michigan:

Dear Sir—I am in receipt of your communication of recent date in regard to the new automobile tax law in which you ask what tax or license would be required from a small dealer who does not run a garage and who has not more than four or five cars on hand at any one time and continuously makes sales and changes in these cars, perhaps only driving one as a demonstrating car. Such a dealer as mentioned and described in your communication would be considered as coming under the provisions of section 8 of the act which provides that "before the registration of motor vehicles owned by and under control of a manufacturer or dealer in motor vehicles and who has complied with the provisions hereinafter set forth, if such person operate on the public high-

way not more than five such vehicles \$50.00, and \$10.00 for every motor vehicle in excess of five so operated."

The payment of this tax would, of course, permit the dealer to operate any one or more of five motor vehicles on the public highway, but if he kept and operated more than five he would be required to pay \$10.00 for each additional vehicle operated above that number. However, if the dealer only desires to operate one individual vehicle on the public highways he would only be required to take out a license for the particular vehicle operated, but of course, could only operate the individual vehicle for which the license was granted.

I am enclosing herewith for further consideration along the line of your inquiry copy of opinion rendered to Hon. Coleman C. Vaughan, Secretary of State, under date of the 15th ultimo.

With best personal regards, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

MICHIGAN COLLEGE OF MINES. TUITION. Student not entitled to the benefits of the \$25.00 tuition fee unless they were bona fide residents of the State one year preceding their matriculation in said College.

December 7, 1915.

Mr. F. W. McNair, President, Michigan College of Mines, Houghton, Michigan:

Dear Sir—I am in receipt of your communication of recent date relative to the matriculation fee of one George W. Koronski as a student of your Institution. You state that possibly you did not make your request clear in your former communication and you now specifically request a construction of the language employed in section 2 of Act 224 of the Public Acts of 1903.

That part of the section in question provides as follows:

"The board of control shall establish a matriculation fee to be paid by all students which shall not be less than ten dollars for all persons who have been bona fide residents of this State for not less than one year immediately preceding their matriculation as students in said institution and not less than twenty-five dollars for all others. Tuition shall be twenty-five dollars per year in said institution to all students who have been bona fide residents of this state for not less than one year immediately preceding their matriculation in said institution, and the board of control shall establish rates for tuition of all others which shall aggregate not less than fifty dollars, nor more than two hundred dollars per year, * * * Provided, as to all charges mentioned in this section, the board shall have the power to remit the same in whole or in part in the case of deserving and needy students (who are bona fide residents of Michigan) by establishing scholarships, or otherwise."

According to your statement of facts, Mr. Koronski matriculated with your college in the fall of 1911 on his arrival from Pennsylvania and paid the non-resident matriculation fee as above provided.. Before he had completed his course, Mr. Koronski was compelled to leave school and seek employment here in Michigan and has been employed in Michigan the greater part of the time since leaving school, and the question arises as to whether he should be enrolled as a resident student or whether his residence must be determined as of the date of his matriculation in 1911.

I take it that according to the custom of colleges, there is but one matriculation fee and this is paid at the time of the original enrollment of the student in the college. If this is true Mr. Koronski having matriculated with the College in 1911 and paid the matriculation fee of a non-resident student could not be required at this time to pay another or additional matriculation fee. The language of the section in question providing for tuition seems to be plain and unambiguous, and specifically provides that "tuition shall be twenty-five dollars per year in said institution to all students who have been bona fide residents of this state for not less than one year immediately preceding their matriculation in said institution, and the board of control shall establish rates for tuition for all others," etc. Mr. Koronski, not having been a bona fide resident of Michigan for a year immediately preceding his matriculation in 1911 would not be entitled to the benefits of the twenty-five dollars tuition, as provided for in said section, but would necessarily come under the other class of students for which the board of control has established rates for tuition.

However, if the board of control becomes satisfied that Mr. Koronski is at the present time a bona fide resident of the state and that he is needy and deserving, it would be within the power conferred by the above quoted proviso to remit the whole or any portion of the tuition fee to him.

Trusting I have made myself understood in this matter and that this communication may be of some assistance to your board in arbitrating the matter before it, I remain,

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

RESIDENCE. Certain facts reviewed and held that residence of indigent insane person dependent upon his intent during soundness of mind.

December 8, 1915.

Dr. E. H. Campbell, Medical Supt., Newberry State Hospital, Newberry, Michigan:

Dear Sir—

In re John E. Anderson.

You have requested an opinion from this Department upon the following statement of facts regarding the above named person. You state

that said Anderson was originally admitted to your hospital as a public patient from Delta County and discharged as recovered in May, 1912. In December, 1912, he returned to Luce County where he was employed until November, 1914, when he left the county of Luce and went to Delta County, remaining there until February, 1915, at which time he secured employment in Baraga County where he remained until the first of August 1915, when he secured employment in Ontonagon County and was in such employment in Ontonagon County until December 1st.

You desire to know whether this man has any legal residence in any county in this State or whether his maintenance should be charged to the State direct.

If this patient was a legal resident of Delta County at the time of his original commitment to your Institution, but after being discharged as recovered remained in the County of Luce for nearly two years and then returned to Delta County where he remained three months since which time he has not continuously resided in any other county for one year, the question of his residence would become largely a question of intent on his part at the time he left your Institution as recovered. If Mr. Anderson, upon leaving your Institution restored to soundness of mind took up his residence in Luce County with the intention of residing therein permanently not having resided in any other county continuously for one year since leaving Luce County, he would be considered a resident of Luce County, but if upon leaving your Institution, he remained in Luce County merely for the purpose of employment and with no intention of making it his permanent home but intended to return to Delta County, his former home after his employment in Luce County had ceased and only leaving Delta County to secure temporary employment in other places, he would be considered as a resident of Delta County for the purposes of recommitment to your Institution. However, as above stated, residence is largely a question of fact to be determined by the intent of the person and that intent in many cases can only be gathered from acts and conduct.

Trusting I have made myself clear in the above matter, I am,

Very respectfully,

GRANT FELLOWS,

Attorney General.

G-v-O

LAND CONTRACTS. A land contract not entitled to record because not acknowledged by vendors is not cured by an assignment of such contract to a third person by vendees.

December 13, 1915.

Mr. A. L. Sayles, Prosecuting Attorney, Newberry, Mich.:

Dear Sir—I have your communication of recent date in which you refer to an opinion of this Department rendered by you recently to the effect that a certain land contract not acknowledged by vendors, or anyone in their behalf, was not entitled to record and you state that since this opinion was rendered the vendees to this contract have attached thereto an article purporting to be an assignment of said contract to a third person and now offer the original contract with the assignment attached for record and insist that the same be recorded.

You state that the assignment purports to assign the vendees interest "in and to the land contract attached hereto and hereby made a part hereof, said land contract being dated the 30th day of November A. D. 1914 and being executed by and between the Upper Michigan Land Company of the first part and said D. M. Dilley of the second part." You desire to know if this assignment has cured the defect of the original contract and entitled it to record.

If the original contract was not entitled to record, I note nothing in the premises of the assignment which when attached to the original contract would render it eligible to record providing the original contract is still unacknowledged by the vendors.

You also state that the parties offering this contract for record refuse to pay the usual tax of one-half of one per cent according to the statute providing for tax upon executory contracts for the sale of land. I fail to comprehend the logic of their contention. If the contract is entitled to record as contended by the vendees, then certainly it is taxable under the law as the so-called "Mortgage Tax Law" in section 1 thereof provides that the tax therein specified to be paid at the time of the recording of the instrument shall apply, among other specific contracts, to "executory contracts for the sale of real estate." I think your advice to your register was correct.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

HEALTH OFFICER. Village health officers compensation relative to contagious diseases in the village is proper charge against the village and not against the county.

December 13, 1915.

Mr. Hiram R. Smith, Prosecuting Attorney, Roscommon, Michigan:

Dear Sir—I have before me your communication of recent date relative to a bill presented to the board of supervisors by the health officer of a certain village in your county, which bill was for caring for, fumigating and disinfecting a case of scarlet fever, and you state the facts to be as follows:

The case of scarlet fever was reported to the health officer of the village. No physician was employed. Members of the family were quarantined at the home by the health officer of the village under instructions from the prosecuting attorney of the county. Afterwards the health officer did the necessary fumigating and disinfecting of the family and the home and presented his bill therefor to the board of supervisors of the county who rejected the same on the ground that it was a charge against the village. You desire to know whether under the above statement of facts, this should be a charge against the village or the county.

I would direct your attention to sections 4460 and 4462 of the Compiled Laws of 1897, which said section 4460 provides that whenever the health officer of any township, city or village of this state shall receive reliable notice, or shall otherwise have good reason to believe that there is within the township, city or village of which he is the health officer, a

case of small pox, diphtheria, scarlet fever or other communicable disease dangerous to the public health, it shall be the duty of said health officer, unless otherwise instructed by the board of health, to immediately investigate and in behalf of the board of health of which he is the executive officer, to order a prompt and thorough isolation of those sick or infected with such disease, so long as there is danger of their communicating same to other persons. It further provides that it is the duty of said health officer to see that no person suffers for lack of nurses or other necessities because of isolation for the public good and to disinfect rooms, clothing and premises, and all articles likely to be infected before allowing their use by persons other than those isolated, etc. Section 4462 provides that in the fulfillment of the requirements of this act, the health officer, unless other provision shall have been made in accordance with law, shall be entitled to receive from the township, city or village of which he is health officer, compensation at the rate of not less than \$2.00 per day.

The two sections above referred to seem to control in such cases and the Supreme Court of this State has held in the case of *Tabor v. Board of Supervisors*, 156 Mich. 176, that the performance of and compensation for duties clearly specified in sections 4460 and 4462 precluding the right to a claim for such services under section 4424 of the Compiled Laws which provides for the auditing of certain bills by the board of supervisors of the county.

Accordingly under the facts submitted in your communication the compensation of the health officer is a proper charge against the village of which he was an executive officer and not against the county at large.

Very respectfully,

GRANT FELLOWS,

Attorney General.

G-v-O

INDIANS. Amenable to fish and game laws if not living upon reservations and not having tribal relations.

December 14, 1915.

Hon. William R. Oates, Commissioner, State Game, Fish and Forest Fire Dept., Marquette, Michigan:

Dear Sir—I have before me a copy of a communication received by you from one Andrew Waishkey Chief of the Chippewa Indians in which he cites sections of certain treaties formerly entered into with the chief of his tribe, and by the terms of which authorized all Indians of certain tribes to hunt and fish in any manner desired by them in certain territory, adjacent to the Great Lakes in this State.

You desire an opinion as to whether the chief of the Chippewas is correct in his conclusion as to the interpretation of the terms of former treaties with the Indians, or whether the Indians in northern Michigan are amenable to the laws of this State including the game and fish laws that have been enacted by the legislatur.

The Chief attempts to quote from a treaty which he claims was the first treaty made with the Chippewas and other nations in 1789 and from

another treaty which he terms the treaty of 1836, which he claims was entered into by his grand father, Chief Wawbojick and certain commissioners authorized by the United States Government to make treaties with the Indians. The Chief may be correct as to the dates of these treaties with the Indians, but it occurs to me that if he and his people have any rights under the treaty those rights must be prescribed by treaties of later dates than those mentioned in his communication, and the language quoted by him as contained in "the first treaty made with the Chippewas and other nations in 1789" is the clause found in the treaty of Greenville made in 1795, the terms of which said treaty, and that of another treaty made in 1807, seem to have been abrogated by certain acts of disloyalty by the Indians toward the United States government during the War of 1812, when the Chippewas, Ottawas, Pottawamies and Wyandottes, took up arms against this government and in behalf of Great Britain. After this war a new treaty was made in 1815 restoring these Indians to good standing and re-adopting the terms of the Greenville Treaty of 1795 so that if those tribes of Indians have any rights under a treaty, those rights date from treaties entered into after the war of 1812.

This Department seems to have squarely passed upon the question presented by the Chief of the Chippewas and you will find a record of the holding of this Department including a summary of the treaties entered into with the different tribes of Indians on page 380 of the Attorney General's Report for the year 1914, to which I would specifically direct your attention. I am, therefore, of the opinion that all Indians of this State not living upon reservations and not having tribal relations are subject to the game and fish laws of this State the same as other individuals.

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

MORTGAGE TAX LAW. Executory contract for sale of land not recorded under the terms of the act, the tax is to be computed upon the principal debt or obligation secured by the contract itself.

December 14, 1915.

Mr. George W. Wood, Lake City, Michigan:

Dear Sir—I have before me your communication of recent date relative to the mortgage tax law in which you ask if executory contracts for the sale of land may be recorded and a tax of one-half of one per cent paid thereon, and if so, how the amount upon which the tax is to be paid is to be determined.

Not having any separate copies of the mortgage tax law, I would respectfully refer you to Act 91 of the Public Acts of 1911 which said act is known as the "mortgage tax statute." Section 1 of said act provides that the word "mortgage" as used in said act shall include every mortgage or other instrument by which a lien is created over or imposed upon real property, and shall also include *executory contracts* for the sale of

real property. Section 2 of the act provides that a tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of the principal debt or obligation, which is, or in contingency may be, secured by a mortgage upon real property situated within this State, recorded on or after the first day of January, 1912, is imposed on such mortgage and shall be collected and paid as provided by said act.

Accordingly if executory contracts are offered for record, the tax should be computed and paid thereon according to the terms of said act, and in determining the amount of tax to be paid thereon, it should be figured upon the basis of fifty cents for each one hundred dollars of the principal debt or obligation which is, or in a contingency may be, secured by the contract at the time it is offered for record. To be more specific, if the contract of which you speak is to secure the payment of \$2,000, then the tax should be figured on that basis, but if the contract is to secure the payment of but \$1,200, \$800 having been paid down before or at the time of the execution of the contract, then the tax should be figured on \$1,200, or the amount specified in the contract, the payment of which is secured thereby.

Hoping I have made myself clear, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

G-v-O

STATE VETERINARY BOARD. Has right to determine whether educational standards for license to practice in other States are equal to those in Michigan.

December 20, 1915.

Dr. Judson Black, Secretary, Michigan State Veterinary Board, Richmond, Michigan:

My dear Sir—I have before me yours of recent date enclosing application for license to practice veterinary medicine and surgery made by one Levius D. Mills who claims to be a regularly licensed veterinarian of the State of Virginia and as such claims the right to be registered and permitted to practice under the reciprocal clause contained in Act 244 of the Public Acts of 1907, as amended, the reciprocal clause above referred to reading as follows:

“Michigan shall reciprocate with other States and provinces in an interstate recognition and exchange of licenses upon a basis of equality of educational standard and mutual recognition, which standard shall not be lower than required by the provisions of this Act.”

The Act itself seems to vest with the Veterinary Board the authority to effect an interstate recognition and exchange of licenses to practice of veterinary medicine and surgery upon a basis of equality of educational standard and mutual recognition, which standard shall not be lower than required by the provisions of said Act 224. Whether a standard of a certain State is lower than required by the provisions of the Michigan law is a question of fact to be determined by the Michigan

Veterinary Board and if said Board has not effected interstate recognition and exchange of licenses upon the proper basis with any other State, then they are not compelled to accept or recognize licenses granted to veterinarians of those States.

I note that Mr. Mills contends that the Michigan statute is unconstitutional and void, and through his attorney recites twenty-eight separate constitutional objections to the Act, many of which objections seem frivolous, while others might be entitled to some degree of consideration. However, we shall assume that the Act is constitutional and effective until the Court of last resort decides to the contrary and you are advised to proceed under the law as amended and in the light of the above explanations.

I am returning herewith application and affidavits of Mr. Mills.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

G-pi-O—encls.

STATE LIVE STOCK SANITARY COMMISSION. Need not appraise animals ordered killed when animals are worthless.

December 22, 1915.

State Live Stock Sanitary Commission, Lansing, Michigan:

Gentlemen—Of recent date you have submitted to this Department for an opinion thereof a certain communication received by you from one W. F. Umphrey, attorney for one Spencer Postal, who claims compensation for certain horses ordered killed by your Commission, which said horses were afflicted with the contagious disease known as glanders. You desire to know whether under the facts stated in the communication Mr. Postal is entitled to any compensation for the animals thus killed.

Act 182 of the Public Acts of 1885, as amended, provides for the appointment of a Live Stock Commission and prescribes the powers and duties of said Commission. One of the chief duties of said Commission is to affect proper quarantine upon knowledge of contagious or infectious diseases among stock or domestic animals, and to take diligent measures for the suppression of the disease even to the extent of ordering certain diseased animals killed. The Act further provides that an appraisal shall be made of all animals killed and upon proper certificate issued and report made the Auditor General is authorized to draw a warrant upon the State treasury for payment of the value of said animals as appraised by the Commission. Section 9 of the Act in question provides as follows:

“Whenever the Commission shall direct the killing any domestic animal or animals it shall be the duty of the Commissioners to appraise the animal or animals condemned, and in fixing the value thereof the Commissioners shall be governed by the value of said animal or animals at the date of appraisalment.”

Accordingly, if the horses of Mr. Postal were of no value at the time they were ordered killed, an appraisal would be unnecessary as the only

object of the appraisal is to estimate the value of the animals ordered killed so that due compensation may be made by the State. It goes without saying that if the animals were of no value, then no appraisal was necessary because no compensation could be paid to the owners.

Trusting I have made myself understood in the above, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

G-pi-O

EMPLOYMENT AGENCY ACT. One who has paid the full amount per annum for a license for a portion of a year is not entitled to a refund, the payment having been made voluntarily.

December 27, 1915.

Hon. James V. Cunningham, Commissioner of Labor, Lansing, Michigan :

Dear Sir—I have before me your letter of the 23rd instant with which you enclosed communications addressed to yourself and to the secretary of the Board of State Auditors by Mr. James S. Tozer of Sault Ste. Marie. It appears that Mr. Tozer has been conducting an employment agency in this city pursuant to the provisions of Act 301 of the Public Acts of 1913. Pursuant to the requirements of said act a license fee of \$25.00 was paid for portions of each of the years 1913 and 1915, the license for the last mentioned year having been issued before the decision in the case of *People v. Brazee* was handed down by the Supreme Court. It was suggested in the opinion in that case that the annual license fee as prescribed by the statute might be pro rated by the State Labor Commissioner, and I understand from your statement that such has been done with reference to applications for licenses made since the decision referred to was rendered. Mr. Tozer comments upon this fact and requests that there be refunded to him the difference between the amounts paid him for the years 1913 and 1915, and the amounts that he would have been required to pay had the fee been pro rated at the time when such licenses were issued to him.

I assume from the facts suggested by the correspondence before me that the license fees paid by Mr. Tozer were not in fact paid under protest, and also that he did not at the time of making the application tender you the pro rated amount and request that a license for the balance of the year might be issued to him. Neither does it appear that any compulsion or duress whatever prompted the payment of the fees. I am impressed, therefore, that under any aspect of the case as deducible from the facts before me, the payments made must be regarded as voluntary. Such being the case, the applicant is not now legally entitled to demand the return of any portion of the fees so paid by him.

It is a necessary presumption in any such case as this that every man is presumed to know the law. In an instance where officials and individuals alike proceed under an erroneous construction of a particular statute, the latter may not be heard to complain in a case such as is now before us when no steps were taken to preserve the right to subsequently question the legality of the action taken, or of a payment of money actually made. The Supreme Court in many cases arising under the tax

law of the State has repeatedly recognized and declared the general principles that shall be applied in the determination of such a matter. Illustrative of such decisions, I would call your attention to the case of *Manistee Lumber Co. v. Township of Springfield*, 92 Mich. 277. In that case taxes had been assessed and collected from year to year under a misapprehension as to the requirements of the statute. The taxpayers, who were complainants in the case, had paid the same without protest. It was accordingly held, there being no fraud in the assessment or levying of such taxes, that there could be no recovery.

I believe that the principle underlying this decision and other similar decisions must govern in the case before us. It follows, therefore, that the applicant made his payments voluntarily, without reserving the right to raise the question at a subsequent time and without having computed and tendered to you as State Labor Commissioner the pro rated amount that he now asserts should have been paid, is not entitled to claim that a portion of the amounts actually paid should be refunded.

I am returning herewith the correspondence submitted with your inquiry.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. The legislature at the session of 1915 was not estopped to amend the trunk line highway because expense had been incurred under the provisions of the original act.

December 27, 1915.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Michigan :

Dear Sir—Act 334 of the Public Acts of 1913 provided for the establishment of certain so-called trunk line highways passing through various sections of this State. Among others, it was directed that one of such highways should pass through Mt. Clemens and Marine City. In accordance with such direction the line of highway was established between the cities mentioned passing through the Village of New Baltimore but not touching the Village of Algonac. A survey of this line was had and plans were made at an aggregate cost of approximately \$500. At the session of 1915, the Act referred to was amended by the legislature and the word "Algonac" was inserted between the names of the other cities mentioned so as to require, if such amendment be regarded as valid and mandatory, that the trunk line highway should pass through the Village of Algonac. The question is now raised, in view of the incurring of the expense suggested, as to whether or not it was competent for the legislature to change the route by the amendment of 1915.

I am impressed that the question must be answered in the affirmative. In other words the matter is one that rests wholly within the power of the legislature and the incurring of expense pursuant to the Act of 1913 in establishing the line along a certain route cannot be so construed as to forbid a subsequent legislature of the State from legislating further upon the matter or changing the provisions of the existing statute. Whether or not such changes were proper to be made was a question

for the legislature and there was no legal obstacle based upon constitutional grounds to prevent the enactment of the amendment referred to. It is obvious that a contrary view would result in conferring upon a legislature the authority to enact, in certain instances at least, legislation not subject to change by subsequent legislative bodies. Such a condition would, of course, be repugnant to the fundamental law of the State and the principles of our government. I am impressed, therefore, that you should be governed wholly by the act in question as amended at the session of 1915, without reference to the provisions of the measure as originally enacted in 1913, and likewise without reference to the fact that the expense referred to in your letter has been incurred.

I am returning herewith the map enclosed with your letter.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

INDUSTRIAL ACCIDENT LAW. The claim of an attorney hired by the Commissioner of Insurance to defend a private claim against an employer who is a member of the State Accident Fund, may be paid under the provisions of Section 9 of Part V, Industrial Accident Law, the same being paid out of the State Accident Fund.

December 27, 1915.

Hon. John B. Mathews, Secretary, Board of State Auditors, Capitol:

Dear Sir—You have referred to this Department the claim of W. L. Townsend, Attorney at Law, of Gaylord, Michigan, dated November 27th, 1915, covering services rendered to Robert K. Orr, Manager, State Accident Fund, amounting to \$72.55. The services were rendered in the case of Emma Seiwel, against an employer insured in the State Accident Fund.

I am informed by Mr. Orr that this was a case where he considered it necessary to defend the fund against the claim which, as above stated, was against a private employer and was heard before a committee of arbitration under the Employers' Liability Law. I am further informed by Mr. Orr that the premium charged to private employers who are members of the State Accident Fund covers the defense of claims against them.

The only question as I take it in this matter is whether the manager of the State Accident Fund has any authority to employ a private attorney in a case of this kind and have him paid out of the State Accident Fund.

It has been my position in these matters that the Attorney General's Department is not obliged to defend the decisions of the Industrial Accident Board excepting where the State itself or some institution or department thereof is the employer. Neither is the Attorney General obliged by law to defend employers, other than the State or some department or institution thereof who are insured in the State Accident Fund.

The administration of the State Accident Fund is vested in the Commissioner of Insurance under the provisions of Part V of Act No. 10 of the Public Acts of 1912, First Extra Session, but the funds are merely trust funds so far as the State is concerned, the expense of ad-

ministration being a charge upon the funds obtained from premiums and assessments. Section 9 of Part. V, above referred to, provides, in part, as follows:

"The Commissioner of Insurance shall issue proper receipts for all moneys so collected and received from employers, as aforesaid, * * *. He may employ such deputies and assistants and clerical help as may be necessary, and as the Board of State Auditors may authorize, for the proper administration of said funds and the performance of the duties imposed upon him by the provisions of this Act, at such compensation as may be fixed by said Board of State Auditors, and may also remove them. The Commissioner of Insurance and such deputies and assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the Board, but all such salaries and expenses so authorized by the provisions of this Act shall be charged to and paid out of said accident fund * * *."

I think it could be said without stretching the provisions above made that the services of an attorney employed by the administrator of the accident fund in such a case as that under consideration would come within the description "deputies and assistants and clerical help." The section, however, contemplates that the State Board of Auditors shall authorize the employment of such deputies and assistants and clerical help. The better practice in such matters, though perhaps not absolutely necessary, would be for the Board to approve in advance of the hiring and I would suggest this course be followed.

However, with relation to this particular claim, the same being O. K'd. by the Commissioner of Insurance, I have no doubt the Board of Auditors have authority to allow it as a charge against the State Accident Fund.

I return herewith the claim.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O.—enc.

STATE BOARD OF REGISTRATION OF NURSES. Members of Board not entitled to compensation excepting when Board is in session.

December 27, 1915.

Hon. O. B. Fuller, Auditor General, Capitol:

Dear Sir—Your communication of the 7th inst. received with reference to the claim of Dr. John L. Burkart, for two days service marking and examining papers for the State Board of Registration of Nurses. You further state that the time charged for by Dr. Burkart is evidently after the State Board of Registration had adjourned its session. As Dr. Burkart is Secretary of the State Board of Health and would draw his salary as such for the same period of time, you have requested my opinion upon the propriety of paying compensation for both services for the same period of time.

In reply thereto would say that it is an ordinary and well settled

principle that in the absence of express legislation an officer of the State is not entitled to draw two salaries for the same period of time. This is the construction which has heretofore governed in this State and is no doubt well understood among State officers.

The State Board of Registration of Nurses is organized under Act 319 of the Public Acts of 1909. It provides that the Secretary of the State Board of Health shall be a member of the Board. Section 6 provides:

"All moneys received by said Board shall be paid to the State Treasury quarterly, and shall be credited to the general fund of the State, and a receipt for the same shall be filed by the Secretary of the State Board in the office of the Auditor General. The incidental and the traveling expenses of said Board shall be paid from such fund only. The compensation of all members of the Board shall be at the rate of five dollars a day, together with all legitimate expenses, which shall be paid from the aforesaid fund, *for each day actually engaged in attending meetings of said Board*, and in no case shall any more be paid than was actually expended."

No provision is made in the above section, nor in any part of the Act, for the payment of compensation to individual members of the Board other than for each day actually engaged in attending meetings of said Board. It therefore follows that no compensation can be paid for services performed while the Board is not in session. This would be true independent of the question of an officer of the State drawing two salaries for the same period of time.

I am, therefore, of the opinion that the claim for two days' services, if those services were performed when the Board was not in session, should not be allowed.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

INDUSTRIAL ACCIDENT LAW. Where an employe of the State is injured, his hospital bill is a charge against the funds of the Department or institution employing him and not against the State Accident Board.

December 27, 1915.

Hon. John B. Mathews, Secretary, Board of State Auditors, Capitol:

Dear Sir—Your communication of the 15th inst. received enclosing claim No. 7473, Hackley Hospital, \$67.00, for hospital services rendered John Hulst, an employe of the State Fire Marshal's Department, injured in the service of the State, together with your request for a written opinion as to whether or not the same is a valid claim against the State.

In reply thereto would say that it is my understanding that the question raised is whether this claim should be paid out of the "Accident Fund" or out of the appropriation for the State Fire Marshal's Department. The claim itself is approved by the State Fire Marshal, Hon. John T. Winship. It is my further understanding that the State Fire Mar-

shal's Department has paid its premium against accident liability into the "Accident Fund."

Such being the case the matter is governed by the provisions of Section 6 of Act 388 of the Public Acts of 1913, which provides, in part, as follows:

"Upon July first, 1913, and annually thereafter the Commissioner of Insurance shall determine the premium or assessment necessary to pay the compensation accruing under act number ten of the first special session of nineteen hundred twelve to persons in the service of the State, *except that such premium shall not cover the medical and hospital services and medicines as required by said Act, but the cost of same shall be paid by each State institution out of its current expense fund*, and he shall then certify the same to the Auditor General, and the Auditor General shall order the State Treasurer to credit to the "accident fund" created by the above mentioned act the amount so certified, and the amount so credited by the State Treasurer to said accident fund shall be debited by him to the current expense fund appropriated by the Legislature for each State *institution or department*."

It would appear by reference to the underlined portions of the above quoted section that the claim should be allowed by the State Board of Auditors and paid out of the funds appropriated to the State Fire Marshal's Department and not out of the State Accident Fund.

I am returning herewith the claim,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O
enc.

STATE BOARD OF EDUCATION. Has no authority to enforce observance of rules and regulations of private rooming houses. Legislature may confer authority on Board to prescribe reasonable rules and regulations to be observed by the students in selecting rooms.

December 28, 1915.

Prof. Charles McKenny, President, Michigan State Normal College, Ypsilanti, Michigan:

My Dear Sir—This department is in receipt of your communication of the 14th inst. containing request for an opinion on the three following questions:

- "1. Has the college authority to require landladies to live up to these regulations?
2. Has it the authority to refuse to admit students who come from houses that do not enforce such regulations?
3. If no legal authority to regulate rooming houses now exists on the part of the college, would the legislature have authority to enact legislation giving such authority to the college? It

is assumed all the time that college means state board of education."

In reply to your first question, i. e. as to the authority of the Board of Education to require landladies who take student roomers to live up to certain regulations prescribed by the Board for the observance of such landladies, my answer would be in the negative as indicated in a former opinion of this Department to Mr. Keeler. In other words, a Board of Education possesses no authority to dictate rules and regulations and compel their observance by property owners or individual citizens who may desire and offer to rent rooms to students.

Answering your second inquiry as to whether the Board of Education has authority to refuse to admit students who come from houses who do not observe and enforce the regulations prescribed by the Board, I feel compelled to answer in the negative and to state that no such authority seems to have been conferred upon the State Board of Education providing the student possesses the other requisite qualifications for admission to the School.

The answer to your third inquiry involves largely a question of fact, the determination of which would depend upon the circumstances and conditions of each individual case. There being no legal authority vested with the Board of Education to regulate the conduct of house-holders who offer rooms in their homes to students for a rental, the legislature would be authorized to confer authority on the State Board of Education to prescribe such reasonable rules and regulations for the government of rooming houses offering rooms to students, and to insist that students should secure rooms only in such rooming houses as observed such reasonable rules and regulations thus prescribed.

Trusting I have made myself clear in the above, I am,

Very respectfully yours,

GRANT FELLOWS,

Attorney General.

G-pi-O

BANKING LAW. The right of a foreign corporation to hold stock in a Michigan bank discussed.

December 28, 1915.

Hon. Frank W. Merrick, State Banking Commissioner, Lansing, Mich.:

Dear Sir—Answering your communication of recent date as follows:

"In a recent examination of a state bank we found ownership of a considerable block of the stock vested in a corporation composed largely of some of the directors of the issuing bank. This corporation is a foreign corporation organized under the laws of the state of Delaware.

We desire your opinion as to whether or not stock of a Michigan state bank can be owned by another corporation, foreign or domestic. We are enclosing you herewith copy of the laws of Delaware, and certified copy of certificate of incorporation of the company referred to, which kindly return."

On examination of this matter I find that this question was presented to my predecessor, Hon. Franz C. Kuhn, and an opinion rendered thereon dated May 24th, 1911, found on page 332 of the Attorney General's Report for 1911, to which your attention is called. The question there raised was as to the right of corporations in general to take and hold stock in a bank and it was the opinion of the then Attorney General that the right depended primarily upon either of two points: First, whether the holding of the stock was necessary; Second, whether there was express permission in the statute under which the corporation was organized. So far as the Michigan banking law was concerned, Attorney General Kuhn was of the opinion that the word "person" as appears in the banking law with reference to incorporators and shareholders might be extended and applied to corporate bodies as well as individuals under the provisions of section 50 of the Compiled Laws of 1897 relative to the construction of statutes. The opinion concludes as follows:

"Reference must be had to the provisions of the act of incorporation of the corporation holding the bank stock and a determination must be made of the purposes for which such stock was purchased in order to settle the question of the right of the corporation to take and hold such stock."

In the case which you present, an examination of the statute under which the corporation is organized (same being a Delaware corporation), it is apparent that permission is there given to hold stock in banks either in Delaware or in any other State. The only question, therefore, for consideration is whether under our banking law such a corporation would be permitted to hold stock in a Michigan bank.

Were I to express my present views of the matter, I would probably disagree with the opinion of my predecessor as to the application of section 50 of the Compiled Laws of 1897. It appears, however, from the correspondence that other investments in Michigan have been based upon the opinion above referred to and that opinion being of some years' standing, I would not, therefore, care to either criticize or reverse the same in the absence of an opinion from the court of last resort.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

P-v-O

BANKING LAW. The term "paid in capital" as used in section 11 of the banking law means capital derived from the sale of stock.

December 28, 1915.

Hon. Frank W. Merrick, Banking Commissioner, Lansing, Michigan:

Dear Sir—Answering your communication of recent date as follows:

"Section 11 of the banking law limits the investment by a state bank in real estate for banking purposes to 'fifty per cent of its paid in capital.' The question is asked whether the phrase 'paid in capital' means 'capital stock' or does it mean the entire assets

of the bank, viz: money paid in for stock, surplus, undivided profits, or other property in the bank. We will appreciate an opinion from your Department on this question."

In reply thereto would say that the provision of section 11 of the State Banking Law to which you refer reads in part as follows:

"The bank may purchase, hold and convey real estate for the following purposes, but no other:

First, such as shall be necessary for the convenient transaction of its business, including with its banking office, other apartments to rent as a source of income, but which shall not exceed fifty per cent of its paid in capital * * * "

The meaning of the phrase "paid in capital" as it appears in this section is doubtless made clear by reference to the provisions of section 5 of the same act in which it is provided:

"At least fifty per cent of the capital stock of every bank shall be paid in before it shall be authorized to commence business, and the remainder of the capital of such bank shall be paid in in monthly installments of at least ten per cent on the whole of the capital, payable at the end of each succeeding month * * * "

Other provisions of the banking law clearly distinguish between paid in capital and other assets of the bank, such as surplus, undivided profits, etc. This, as I take it, is the view held by Michie in that part of his work devoted to a discussion of capital, stock and dividends from which I wish to quote as follows:

"Section 36. Amount of Capital and Shares. The capital of a bank is not an ideal, fictitious, arbitrary sum of money set down in the articles of association, but is composed of substantial property and is that which gives value and solidity to the stock of the institution. It is the foundation of its credit in the business community. Capital used in the business of banking is none the less so because it is borrowed. The mere fact that the money permanently invested in the business is borrowed does not alter its character as capital but a temporary loan obtained to meet an emergency is not capital.

The capital stock of a bank is the whole undivided fund paid in by the stockholders, the legal right to which is vested in the corporation to be used in trust for the benefit of the members. If a large surplus be accumulated and laid up that does not become a part of it. (Citing *Farrington v. Tenn.* 95 U. S. 679.)

'Capital' and 'capital stock' of a bank, while sometimes used interchangeably, are not one and the same thing. 'Capital' includes the entire assets of the bank, whether represented by money paid in for stock, surplus, undivided profits, or other property of the bank; while capital stock represents only the total amount derived from the issuance of the shares of stock." (West v. Newport News, 104 Va. 21; Michie Banks and Banking, pages 75 and 76.)

The term "paid in capital" as used in section 11, therefore, must be taken to refer only to money paid in for stock, which amount is fixed by statute as distinguished from reserve capital, undivided profits, etc., which are more or less under the control of the directors of the bank and may vary with the fortunes of the business.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

P-v-O

RAILROAD COMPANIES. It is unlawful for a railroad company to grant free transportation of property or persons to its tenants; Transportation of persons and property can only be paid for in money.

December 29, 1915.

Michigan Railroad Commission, Lansing, Michigan:

Attention Mr. Glasgow.

Gentlemen—This is to acknowledge receipt of yours of December 23rd, 1915, enclosing with it correspondence from Mr. Sanford W. Ladd on behalf of the Michigan United Traction Company and the Michigan Railway Company asking the Commission to authorize the companies to grant free transportation for merchandise and certain passengers in pursuance of the terms of contracts about to be executed between the railway company and the Michigan Catering Company, and also enclosing copies of such contracts. Your inquiry is as to the power of the Railroad Commission to grant such request, and also as to the right of the railway companies to furnish such free transportation to property and persons as is contemplated by their contracts with the Michigan Catering Company.

These contracts which are enclosed have to do with the leasing of the depot privileges of the railroad company at Kalamazoo, Jackson and Lansing. I quote from the contract with reference to the Jackson contract (similar provisions being found in the other contracts):

"X. The party of the first part agrees to transport merchandise and things necessary for the conducting of business herein contemplated free of charge. This agreement to furnish free transportation is conditioned upon the Railroad Commission of the State of Michigan giving its consent to said free transportation for the purpose of carrying out the terms of this agreement."

The agreement in question is an agreement of lease. The Catering Company by its terms does not become an employe of the Railway Company. Section 16 of Act 300 of the Public Acts of 1909 provides as follows:

"If any common carrier or any agent or officer thereof shall directly or indirectly by any special rate, rebate, drawback, or by any means of false billing, false classification, false weighing, or by any other device whatsoever, charge, demand, collect or re-

ceive from any person, firm or corporation, a greater or less compensation for any service rendered or to be rendered by it for the transportation of persons or property or for any service in connection therewith than that prescribed in the public tariffs then in force, or established as provided herein, or than it charges, demands, collects or receives from any other person, firm or corporation for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, or shall knowingly and wilfully assist or wilfully suffer and permit such greater or less compensation to be charged, demanded, collected or received, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful. It shall be unlawful for any common carrier to demand, charge, collect or receive from any person, firm or corporation a less compensation for the transportation of property or for any service rendered or to be rendered by said common carrier in consideration of said person, firm or corporation, furnishing any part of the facilities incident thereto: Provided, Nothing shall be construed as prohibiting any common carrier from procuring any facilities or service incident to transportation and paying a reasonable compensation therefor."

I am impressed that under the plain terms of this section no carrier has the right to furnish free transportation of either person or property to its tenants, nor has a carrier the right to furnish transportation of person or property for one person in any different manner than to another person. To put it in another way—the rates must be uniform for all and the service of the carrier must be paid for in cash. I am therefore of the opinion that the proper construction of the Michigan statute precludes the carrier either furnishing free transportation, or from furnishing transportation to be paid for in any other way except by cash and at a uniform rate to all.

The Federal Act, as you will remember, is in almost identical terms. That Act has been construed by the Supreme Court of the United States, in the case of L. & N. R. R. Co. vs. Mottley, 219 U. S. 467. In the Mottley case, Mottley and wife had been seriously injured in a railroad accident. They entered into an agreement with the L. & N. prior to the passage of the Federal Act in question, by the terms of which agreement they released their claim for damages against the railroad company in consideration of the railroad company furnishing them free transportation during the balance of their natural lives. The railroad company carried out the terms of this contract until the passage of the Federal Act in question, when it declined to further continue to furnish such transportation, insisting that such furnishing of such transportation was in violation of the Federal statute. The case went to the Supreme Court of the United States and it was there held that notwithstanding the contract in question, made when such contract was valid, that the subsequent legislation by Congress had prohibited the discrimination which would arise if the Company was permitted to carry out its contract, and the Court stated (page 476):

"In our opinion, after the passage of the commerce Act the rail-

road company could not lawfully accept from Mottley and wife any compensation different *in kind* from that mentioned in its published schedule of rates. And it cannot be doubted that the rates or charges specified in such schedule were payable only in money."

The Railroad Commission could not give to a railroad company authority to do that which the statutes of the State prohibit. Therefore you are advised that in my opinion the Railroad Commission has not the authority to grant the request of the railway company, and the railway company would violate the law if it carried out the terms of the contract submitted with your correspondence.

Trusting this gives you the desired information, I remain,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

F-pi-O

PUBLIC DOMAIN COMMISSION. May not issue a new certificate under sections 1504 and 1510 C. L. 1897 covering a part only of description embraced within original certificate.

December 29, 1915.

Hon. Augustus C. Carton, Secretary, Public Domain Commission, Lansing, Michigan:
Attention Mr. Havens.

Dear Sir—I have before me your letter of the 28th instant in which you request my views with reference to a certain situation that has arisen in connection with the issuance of a certificate of sale of certain lands in Branch County. It appears that in 1837 an original certificate was issued to three parties covering a certain eighty acres of land in section 24 of township 5 south range 7 west. The records of your office indicate that the payments due were made in full but that the original certificate was never surrendered and no patent has ever been issued by the State. It appears now that William F. Anthony has filed a petition in the circuit court of Branch County, pursuant to sections 1504 to 1510 inclusive of the Compiled Laws of 1897, setting forth that the original certificate referred to has been lost or destroyed and asking that a new certificate be issued to him covering a portion only of the said eighty acres. No request is made with reference to the issuance of any certificate or certificates for the balance of the description. In view of the facts, the question arises as to what position in the matter should be taken by the Public Domain Commission, or in other words, whether such a certificate as is asked for may be issued by the Commission.

The statute under which this petition has been filed seems to contemplate that in any instance in which relief thereunder is sought and a new certificate is issued, such new certificate shall stand in lieu of the original certificate that has been lost or destroyed. Thus it is specifically provided in section 5 of the act (section 1509 of the Compiled Laws of 1897) that the new certificate "shall have like effect as the original certificate;" and the first section of the measure refers to a "duplicate certificate." The rights of a petitioner in such a case and the relief that

may be granted depend, of course, upon the statute and no new certificate may be issued except in accordance with the authority expressly granted thereby. There is no provision of the act that seems to contemplate, either by express provision or by reasonable implication, that in the event that the original certificate that has been lost or destroyed, covers a certain description a new certificate can be issued covering a part only of such description. Clearly if such action were taken such new certificate could not be said to stand in lieu of the original, nor to have "like effect" therewith. I am impressed from an examination of the act under which this petition is filed that such form of relief as is asked for in this case is not contemplated thereby. It occurs to me rather that those who are now the legal owners of this land and who doubtless wish to clear up the record title, should join in the petition asking that a new certificate shall be issued covering the entire description mentioned in the original certificate. Such new certificate would, of course, stand in lieu of the former one and a patent might be issued accordingly. If the land has been in fact divided, it would doubtless be a comparatively easy matter for the different parties in interest to execute the necessary conveyances in order that the title of each might be made clear upon the records. Undoubtedly the legislature in the enactment of the law here involved had in mind such an action. If it had been intended that the owner of a part of any such description may have relief granted to him, I think that we may assume that specific provisions to that effect would have been enacted. We must, of course, construe the statute as we find it, and as suggested at the outset, it cannot be regarded as justifying the issuance of a new certificate in any case except as provided for either expressly or by reasonable implication. I am returning herewith the notice of hearing served upon the Public Domain Commission.

Trusting that these suggestions will indicate to you my views upon the matter, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

INSURANCE LAW. INDEMNITY. Certain form of policy indemnifying banks against loss of securities examined and disapproved with suggestions.

January 5, 1916.

Hon. John T. Winship, Commissioner of Insurance, Lansing, Michigan:

Dear Sir—You have made an oral request for my opinion upon the following proposition. The National Surety Company, organized under the insurance laws of New York State and authorized by the laws of New York to transact indemnity and casualty insurance of various descriptions under subdivisions 2, 3, 4, 4a, 5, 6, 7, 8, 9, 10 and 11 of section 70 of Chapter 33 of the New York laws of 1909, as amended, has submitted for your approval its proposed form of a "banker's blanket bond" to be used in this State. The material part of this so-called bond (which is in effect an insurance policy) reads as follows: indemnity against "The loss of bank notes, currency, bonds, debentures, script,

certificates, warrants, transfers, coupons, bills of exchange, promissory notes, checks or other similar securities * * * whether payable to bearer or otherwise payable * * * in which the insured is interested, or of which it has undertaken the custody—

(A) By the dishonest act of officers, clerks, or other employes of the insured, or by robbery, burglary, theft, embezzlement, destruction or misplacement within the insured's premises, whether by the officers, clerks, or other employes of the insured, or any other person or persons, and whether effected with or without violence, or effected by the negligence of the said officers, clerks or other employes of the insured.

(B) By robbery, theft, fraud, dishonesty, or negligence of the insured's officers, clerks or other employes, or of any other person while the said securities are in the custody of the insured, or an officer or other employe of the insured, and in transit between any places within ten miles of any of the insured's offices, specified herein, the said securities containing in transit within the meaning of this clause while within the said area and from the time of the receipt of the same by any such officer, clerk or other employe, for the purpose of transit aforesaid, and until the delivery thereof at destination;"

The liability is limited by several exceptions, which are not material to the question raised.

The charter of the National Surety Company authorizes it to undertake among others the following kinds of insurance:

Article III, subdivision 4:

"Guaranteeing the fidelity of persons holding places of public or private trust * * * and indemnifying banks, bankers, brokers, financial or moneyed associations, or financial or money corporations, against the loss of any bills of exchange, notes, drafts, acceptances of drafts, bonds, securities, evidences of debt, deeds, mortgages, documents, currency and money, except that no such contract or indemnity, indemnifying banks, bankers, brokers, financial moneyed associations, or financial or moneyed corporations, shall indemnify against loss caused by marine risks or risks of transportation or navigation. * * *

5. Against loss by burglary, theft or forgery, or any one or more of such hazards."

The question to be determined is whether this company can be authorized to transact the class of insurance specified in its charter, as above quoted, in this State and whether the form of policy as above proposed would be valid.

The right of the company to do business in this State depends upon the provision of Act 77 of the Public Acts of 1869, as amended, commonly known as the Life Insurance Act. This act authorizes among others the following classes of casualty and indemnity insurance:

"Section 1. * * *

Second, to guarantee the fidelity of persons in positions of trust, private or public, and to act as surety on official bonds and for the performance of other obligations * * *.

Eighth, to carry on the business commonly known as credit insurance or guaranty, either by agreeing to purchase uncollectible

debts or otherwise to insure against loss or damage from the failure of persons indebted to the assured to meet their liabilities;
* * *

Tenth, To insure against loss or damage by burglary, theft, or house-breaking."

Foreign insurance companies are only admitted to do business in this State upon compliance with the provisions of our statutes relative to like companies. A company, such as The National Surety Company, with its class of business, must comply with Act 237 of the Public Acts of 1881, as amended, as well as with the provisions of Act 77 of the Public Acts of 1869; and further it can only transact the classes of insurance which are permitted to domestic companies.

American Automobile Ins. Co. v. Commissioner of Insurance,
174 Mich. page 295.

It is evident from a comparison between the provisions of Article III of the company's charter, and the conditions of the proposed bankers' blanket bond, that the charter provisions are broader than those of the bond, with reference to the protection of bankers, etc., against the loss of securities. The charter provision is simply "against the loss of any bills of exchange, etc., * * * except * * * loss caused by marine risks or risks of transportation or navigation." The policy provision limits the liability of the company to losses of such securities occurring (A) through the dishonest acts of officers, clerks, or other employees of the insured, or by robbery, burglary, theft, embezzlement, destruction or misplacement within the insured's premises, etc.; (B) by robbery, theft, fraud, dishonesty or negligence of the insured's officers, etc., while such securities are in transit.

The protection thus afforded to banks against the loss of its securities appears to be a new form of insurance and from the correspondence your Department has had upon the matter, it appears that the Insurance Department of New York State considered this a new form of insurance and one which was not authorized by the statutes of that State until an amendment had been passed by the legislature expressly covering the subject. Such an amendment was passed in 1915. Therefore, the law of New York was limited in a manner similar to the law of Michigan. It is argued, however, by The National Surety Company that under their new form of policy they are merely combining two classes of insurance under one policy, namely "to guarantee the fidelity of persons in positions of trust, public or private," and "to insure against loss or damage by burglary, theft or housebreaking."

Were this true there could be no objection to the policy as proposed and I have no doubt the company would have the right under our present laws to insure bankers and others against the loss of securities by burglary, theft or house-breaking. I have also no doubt that the company could insure against the loss of such securities due to infidelity of officers, agents and employees of the insured. It occurs to me, however, that the terms of the proposed policy are broader than the terms of our statute which are above quoted in that the policy would include the following elements not covered by the statute, namely, destruction and misplacement within the insured's premises without violence, also loss through

fraud, dishonesty or negligence of any person (whether employes or not). These two elements are clearly not authorized by our statute.

I am, therefore, of the opinion that for the above reasons, which are illustrative, the form of policy submitted should not be approved, but as stated above, I have no doubt that within the limits provided for by statute, the class of insurance, although new in form, might be permissible without additional legislation.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-v-O

BOARD OF STATE AUDITORS. Duty of determining whether contract for paper furnished for the purpose of carrying into effect Act 232 of 1915 has been complied with, rests upon Board of State Auditors and not upon the Commission.

January 5, 1916.

Board of State Auditors, Capitol, Lansing:

Gentlemen—I am in receipt of your communication of the 5th inst. and from this communication, the enclosures therewith, and from a personal conference with you, the following appears to be the situation upon which you request my opinion, viz: In 1913, the legislature by Act 247 provided for the appointment of a Commission to compile the laws of the State. By Act 232 of the Public Acts of 1915, the granting of such compilation was provided for. In section 6 of the last mentioned Act occurs the following provision:

“The paper shall be furnished by the State Board of Auditors and be selected by said Commissioners and, if deemed advisable, shall be of quality, grade, weight and finish of the paper used in the book known as “Corpus Juris,” with a view to securing the printing and publication of said general laws on permanent, durable paper in three volumes.”

Pursuant to the duty devolving upon your Board under this Act to furnish the paper for this purpose you advertised for bids therefor. Bids were received in due course, accompanied in each instant by samples. The selection of the paper under the terms of this section was left to the Commission and paper known and designated as Hercules Book 43 by 56—100 pounds was chosen by such Commission. Pursuant to such selection by such Commission you entered into a contract with the Dudley Paper Company for the furnishing, delivering and paying for such paper. I understand that three carloads of paper have been delivered by the Dudley Paper Company, which paper so delivered by such Company is claimed by such Company to be in compliance with the terms of the contract entered into between such Company and the Board. The question now arises as to whether it is the duty of the Board of State Auditors to determine whether such paper complies with such contract, or whether such duty devolves upon said Commission.

An examination of the statute in question does not indicate an intention upon the part of the legislature to deprive the Board of State Audi-

tors of its power to contract on behalf of the State and its duty of examining and auditing bills presented against the State for paper furnished to carry out the provisions of said Act 232. The power and the duty of investigating and auditing bills rendered for paper furnished for this purpose seems to have been left by the legislature where it was under the general law with the Board of State Auditors. The duty of auditing bills against the State must of necessity carry with it the duty of determining whether the contracts with the State by the parties presenting such bills have been complied with. I am, therefore, impressed with the view, and you are advised, that in my opinion the duty of determining whether the contract in question between the Board of State Auditors and the Dudley Paper Company has been complied with by the delivery of the paper in question rests upon the Board of State Auditors and not upon said Commission.

Trusting this gives you the desired information, I remain,

Very respectfully,

GRANT FELLOWS,

Attorney General.

F-pi-O

TOWNSHIP LAW. A township is liable for expenses incurred by its board of health in taking steps to prevent the spread of a dangerous communicable disease.

January 5, 1916.

Mr. Ray E. Bostick, Prosecuting Attorney, Cadillac, Michigan:

Dear Sir—I note from your letter of recent date that the boards of certain townships in your county have recently incurred some expenses in obtaining cultures from the throats of school children in such townships, procuring the same to be tested for diphtheria germs. It appears that such action was taken while an epidemic of diphtheria existed through the county and pursuant to statutory provisions requiring the township board of health to use all possible care to prevent the spreading of any dangerous communicable disease. The question now arises as to whether expenses incurred in the manner indicated are a charge against the township or against the county. Based upon the statement of facts, presented by you, I am impressed that the expenses occasioned in each township by the action of its board of health must be paid by such township. The purpose of the taking of the cultures and the testing thereof was, of course, the prevention of the spread of the disease. I do not understand that the care of any indigent person is in any way involved. The various statutory provisions relating to the township board of health seem to contemplate that expenses incurred thereby in the performance of its official duties are to be paid by the township except in specific instances in which the county is declared to be liable. I call your attention particularly to section 4450 of the Compiled Laws of 1897. See also section 4424 by which the board of health is required to make "effectual provision" for the safety of its inhabitants. Further provision is made in this section for the care of an indigent person afflicted with a dangerous communicable disease, but as above suggested, I do not understand that the care of such persons is involved in the

question that you have stated. Rather, the expense appears to have been incurred under the first section above cited, that is, in order to "present the spreading of the infection" and is, therefore, a proper township charge.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

MOTOR VEHICLES. Act 33 of 1909 applies to all persons taking an automobile without intent to steal the same and without authority.

January 5, 1916.

Mr. Edward W. Fehling, Prosecuting Attorney, St. Johns, Michigan:

Dear Sir—I have before me your letter of the 1st instant in which you call attention to Act 33 of the Public Acts of 1909 and request my views as to the construction thereof. The measure is entitled: "An Act to prohibit the unauthorized taking and use of automobiles or other vehicles by drivers or caretakers thereof, or by any other person or persons without intent to steal the same, and to provide a penalty therefor." The body of the act is general in its terms applying to every person who takes or uses a motor vehicle in the manner suggested by the title. A proviso in the act declares that the provisions thereof "shall be construed to apply to any person or persons employed by the owner of said automobile or other motor vehicle, or any one else who by the nature of his employment shall have the charge of, or the authority to drive said automobile, or other motor vehicle, if said automobile or other motor vehicle is driven or used without the owner's knowledge or consent." In view of this proviso, you have raised the question as to whether the measure can be deemed to apply to any persons except employes. Stated somewhat differently, the point at issue is whether or not the proviso referred to in effect limits the scope of the act.

It hardly seems to me that the language quoted above is susceptible of the construction suggested. From an examination of the entire act, read in connection with the obvious purpose as indicated in the title, it would seem that the legislature sought to include all persons within its scope who might be guilty of the offense defined and included the specific proviso with reference to employes in order to obviate any possible question as to whether or not the same were intended to be included. My attention is called to no case in which the Supreme Court has passed directly on the point that you have raised. However, in *Doughterty v. Thomas*, 174 Mich. 371, 378, comment was made on Act 33 of 1909. Likewise in *Loehr v. Abell*, 174 Mich. 590, 592, the act was referred to. In both instances, it seems to be implied that the same was regarded as applicable to all persons including employes who use a motor vehicle without authority and without intent to steal the same.

Undoubtedly Act 33 of 1909 is much broader in its scope than is Act 44 of 1907. The earlier measure applied only to the willful taking possession of a motor vehicle without authority and the driving away thereof. Likewise, the Act of 1909 provides for the imposition of a much

more severe penalty than does the statute of 1907, although no specific repealing clause was incorporated in Act 33. The inference would seem to be from the scope thereof that it was intended by the legislature to practically supersede the prior act.. Quite possibly, as you suggest, the latter measure was enacted because the Act of 1907 was so limited in its application as to fail to accomplish the desired purpose.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

JOINT PENOLOGY COMMISSION. May not expend its funds for the purpose of hiring experts to make examinations of inmates of State Penal Institutions.

January 5, 1916.

Mr. Marl T. Murray, Secretary, Joint Penology Commission, Lansing, Michigan:

Dear Sir—This Department is in receipt of your communication of recent date in which you say that at a recent meeting of the Commission the following resolution was adopted:

“Resolved that the Boards of Control of the three penal institutions cause a thorough examination to be made of the inmates of their respective institutions for the purpose of determining the number of tubercular and syphilitic subjects in their respective institutions, such examination to be under the direction of the State Board of Health, and that the report be submitted to the Commission at its next meeting.”

It further appears that, acting on behalf of the Commission, you have conferred with the State Board of Health and it has been agreed that said Board will take care of all the expenses connected with the investigation relating to tuberculosis, but that the statute under which such action is taken limits the board to the sum of \$10.00 per day for the services of an expert. You state that the further investigation contemplated by the resolution will necessitate the services of a physician who can be procured for not less than \$20.00 per day. The State Board of Health will undertake to defray the expenses thereof to the extent allowed by statute and it is desired that the Joint Penology Commission, if it has the legal authority so to do may take care of the balance of the necessary expenses out of its appropriation. You have requested my views as to whether or not money may be expended from the funds of the Commission for the purpose and in the manner suggested by your letter.

A reference to Act 265 of the Public Acts of 1913, by which the Joint Penology Commission was created, will indicate the measure of its powers. Section 7 confers upon it “general advisory and supervisory powers over the conduct of penal and reformatory institutions in the State and to recommend and assist desirable legislation on every subject within the scope of its purposes.” Further provisions are somewhat

more specific in character and have reference to particular powers or duties. Sections 8 and 9 impose the duty and the power of formulating various rules which are to be submitted to the various boards of control. There is no specific clause of the act, however, to which my attention is called that confers power to make such an investigation as is suggested by your communication. Neither do I think that the general clause above quoted can be so considered as to justify the expenditure of money out of the annual appropriation of the Commission for the purpose of conducting such an investigation. Obviously, it was not the intention of the legislature that the powers of the Joint Penology Commission should encroach upon or supersede those previously given to the various boards of control, or other management of the various State penal and reformatory institutions. Neither can it be assumed that it was designed that functions vested in the State Board of Health might be performed even in connection with that board. It will be noted that the language of the resolution adopted by the Commission which is quoted above seems to contemplate that such investigation shall be made by the various boards of control and a report made thereon. In other words, the resolution as stated does not call for specific action by the Joint Penology Commission nor the use of any portion of its funds. I assume from your inquiry that it is now sought to make other provision, that is, to have the proposed investigation made by the State Board of Health and the Commission, all expenses in connection therewith to be paid for in the manner above indicated. For the reason suggested, however, I am constrained to the opinion that such expenditures out of the appropriation of the Commission are not authorized by the statute providing for the organization thereof and defining its powers and duties.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

EMPLOYERS LIABILITY ACT. The liability of the employer for hospital services under section 4 of Part II dates from the time the injury was received rather than from the time when the same developed to the point where hospital services are found necessary.

January 5, 1916.

Mr. John B. Mathews, Clerk, Board of State Auditors, Lansing, Michigan :

Dear Sir—You have recently referred to me for my opinion the claim of Mr. George W. Farnsworth, an employe of the Board of State Tax Commissioners for the sum of \$37.00. It appears that said claim is for expenses for medical services incurred by the claimant during the period from September 21st to October 11th, 1915. A memorandum appears on the bill to the effect that Mr. Farnsworth was injured on the 19th of May, such injury being sustained in the course of his employment in the service of the Board of State Tax Commissioners. No medical treatment was, however, procured until the period above suggested when the expenses covered by the claim were incurred.

Section 4 of Part II of the Employers' Liability Act provides as follows :

"During the first three weeks after the injury, the employer shall furnish or cause to be furnished reasonable medical and hospital services and medicines when they are needed."

In view of this provision of the statute, the question arises in this case as to whether or not the claim presented may properly be allowed. Stated somewhat differently, the precise point at issue is whether the injury may be said to have been received at the time of the accident on the 19th of May, or at the time when medical and hospital services were found to be needed. It is obvious that the same general considerations that are to be observed in construing the particular provision of the Employers' Liability Act that is involved in the instant case must likewise be employed in interpreting other provisions of that act in which reference is made to the injury. As a basic proposition it must be assumed that the legislature employed the term "injury" in its ordinary significance and in consequence each expression with reference thereto must be given its usual meaning, bearing in mind, of course, the underlying purpose of the measure. It would seem from a reading of section 4 of Part II in connection with the other provisions relating to the payment of compensation that reference was intended to be had therein to the time of injury as fixing the date when the liability of the employer for medical and hospital services should begin. It is, of course, true that a distinction should be observed between the word "accident" and the word "injury." Generally speaking, it may be said that the latter follows from the former; in other words that the relation of cause and effect exists. This necessarily implies, as I view the matter, that the injury is received, potentially at least, at the time of the accident, or other happening, from which it results. Thus viewed, it would seem to follow that the "date of accident" and the "date of injury" are the same.

A consideration of certain other provisions of the act appears to bear out this interpretation. For example, section 1 of Part II provides for the payment of compensation to an employee who "receives a personal injury arising out of and in the course of his employment by an employer who is, at the time of such injury, subject to the provisions of this act." Clearly, the legislature, in the enactment of this clause and in the reference to the "time of such injury" had reference to the time at which the accident or happening took place from which the injury resulted. A contrary interpretation would lead to the conclusion that an employer not subject to the provisions of the act when the accident occurred, but who became so before the effects thereof developed to the point of requiring hospital services for the employee, would be held liable for payment of compensation as well as for the payment of medical services. Under such a view the development of the effects of the accident would be controlling rather than the time of the accident itself and from which each and every element of the injury must be deemed to result. Clearly such a situation was not within the contemplation of the legislature. Attention may also be called to the various sections of Part II which have reference to the giving of notice to the employer. These provisions are, of course, intended for the protection of the latter and to enable him to make such an investigation and to take such steps as may be required to protect his rights. I do not think that any construction of these

various clauses, including the particular clause here involved that results in making the time of the development of the injury controlling rather than the time when that injury is received, can be regarded as tenable.

I am impressed, therefore, that the claim presented may not properly be allowed. It is possible that in particular cases this conclusion may result in an apparent hardship. We must, however, construe the statute as enacted. Had it been the intention of the legislature to require that the employer pay for hospital and medical services from the time that the development of the injury requires the furnishing of such services, undoubtedly a specific provision to that effect would have been made. It is also obvious that any such requirement, while tending to the further protection of the employe, might result in very many cases in the imposition of an unjust burden upon the employer by opening the door to fraud as well as by rendering more difficult the making of a proper investigation into the circumstances of the accident from which the injury has resulted. I am returning herewith the claim in question.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

- (1) TOWNSHIP LAW. A township board may not pay for an injury where there is no legal liability whatever resting on the township.
- (2) DRAIN LAW. Payment of expenses, issuance of drain orders and annual report of drain commissioner considered.

January 6, 1916.

Mr. Frank M. Burwash, Prosecuting Attorney, Mt. Pleasant, Michigan:

Dear Sir—I have before me your letter of the 4th instant in which you request my views as to a certain situation that has arisen in one of the townships in your county. It appears that the highway commissioner hired a certain person to work with his team in removing dirt from a gravel pit. In some way one of the team fell into the pit and was killed. The question now arises as to whether the township board may make payment for the horses. You state that the question of a possible successful defense is not involved, it being the desire of the township board to make the payment indicated if the same can legally be done.

Without a more detailed statement of the precise facts involved, I am scarcely in position to express a definite opinion upon the matter. If, however, the accident occurred, as seems to be implied by the statement before me, in such a manner and under such circumstances as to impose no legal liability upon the township then it would scarcely be competent to make payment for the loss of the horse out of township funds. In other words, the township board may not take the action suggested unless it appears that some legal liability may exist against the township. Of course, a doubtful case may be compromised and if it is reasonably certain that liability on the part of the township does exist as a matter of law, it doubtless would be entirely proper to settle the matter in the manner suggested by your letter. As suggested, however, if it seems certain that there is no legal liability for the loss on the part

of the township then the payment by the township board would not be authorized.

You have submitted certain other inquiries with reference to the expenses, powers and duties of the county drain commissioner. It appears that the salary of that official has been fixed by your board of supervisors at the sum of \$1,000 per annum by resolution, and in the same resolution by which such salary is fixed, provision is made for the additional sum of \$200.00 to pay expenses. The question now arises as to the character of expenses that may be considered to be covered by this allowance.

Section 5 of Chapter 9 of the drain law, as amended, provides for the fixing of the salary of the commissioner and specifically declares that he shall be allowed in addition thereto "his actual necessary expenses incurred in the discharge of his duties." It must be assumed, I think, that the sum mentioned in the resolution as adopted by your board of supervisors was intended to be used in the payment of the expenses contemplated by this section. It would not, however, be competent for the board to limit the commissioner to the amount named. In other words, if his actual necessary expenses incurred in conformity with the statute exceed that amount, the same must be allowed; conversely, if the expenses of the commissioner in a given year were less than \$200.00 he would not be entitled to receive the full sum mentioned by the resolution, but rather only the amount actually and properly expended. As a matter of law, therefore, the provision in the resolution of the board with reference to the expenses and the appropriation of the specific amount for the payment thereof is without binding force and effect. As you suggest, such provision is scarcely in accordance with the statute and must be regarded as not authorized.

The issuance of drain orders against the funds of a particular drain for the payment of services rendered and work performed in connection with said drain is expressly authorized by the general drain law of the State. It seems to be the intent of the statute, however, that such orders may properly be issued only for the purpose suggested, that is "for services rendered and work performed." The issuance thereof rests with the commissioner, the duty of auditing the same being imposed on no other official or board. The provisions of the statute relating to the annual account to be rendered to the board of supervisors confers upon said board no express authority with reference thereto other than to receive the same. Quite likely, it was the intention of the legislature that the proper committee of the board of supervisors should examine the report when presented and indicate the results of their examination to the board. In this way a practical check is afforded.

As to whether or not such report should be published as a part of the proceedings of the board of supervisors must rest in the discretion of the board. It is, I believe, customary in some counties of the State, at least, to make such publication. Likewise the making up of the annual appropriations of the board of supervisors in the form of a budget showing the amounts raised for the various county purposes, is not regulated by rigid statutory rules. Doubtless, it would be a very convenient and practical method of procedure and would also tend to simplify to some extent the record of the proceedings. Of course, the amount raised for each particular county purpose must necessarily appear in the proceed-

ings of the board, but the exact form is a matter of choice. Generally speaking, the more specific and the more simple the form, the more satisfactory it is to all concerned.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

- (1) TOWNSHIP. The compensation of members of the board of review is fixed by section 3933 C. L. 1897, and not by Act 248 of 1915.
- (2) INCOMPATIBILITY. The offices of probate judge and justice of the peace are not incompatible.
- (3) VILLAGE LAW. The common council of a village organized under the general law may not vote compensation to the members thereof.

January 6, 1916.

Mr. Earl L. Burhans, Prosecuting Attorney, Paw Paw, Michigan:

Dear Sir—Section 2374 of the Compiled Laws of 1897 was amended by Act 248 of the Public Acts of 1915. Said section fixes the compensation to which certain township officers shall be entitled; in the original section reference was made to the members of the "township board" and to members of certain other boards invested with functions of township government. The amendment of 1915 as printed in the published acts uses the plural declaring that officers composing the "township boards" shall receive compensation at the rate of \$3.00 per day. You have requested my views as to whether or not the last amendment to the section should be so construed as to apply to members of the board of review on the assumption that the legislature intended that board to be included in the general designation of township boards.

It is significant to note that previous amendments to this section, Act 98 of 1907 and Act 260 of 1911, both refer, as does the amendment of 1915, to "boards" and likewise enumerates following such reference, certain other boards. It occurs to me that under the original section, there can be no question but that members of the board of review were not included but rather the compensation of the members thereof was fixed by section 3933 of the Compiled Laws of 1897, same being section 110 of the general tax law. The question, therefore, is whether or not the last cited section insofar as it provides for the compensation to be paid to members of the board of review has been superseded by the amendments to section 95 of the township law.

It does not occur to me that the legislation in enacting the various amendments to section 2374 intended to make any such change as is above suggested with reference to members of the board of review. Had it been intended to modify the provision of the general tax law in question, it seems probable that specific reference would have been made to the board of review. Bearing in mind the general rule that repeals by implication are not favored, I am impressed that the amendments to the section prescribing the compensation of the various township officers should not be enlarged beyond the obvious scope of the original section as the same appears in the compilation of 1897, except insofar as the inten-

tion of the legislature to make such enlargement clearly appears. I believe, therefore, that the compensation of the members of the board of review should be determined in accordance with section 3933 of the Compiled Laws of 1897 rather than by reference to section 2374 as last amended by Act 248 of 1915.

You have also requested my views as to whether or not the offices of probate judge and justice of the peace may be held by the same person. Upon this matter, I would say that my attention is not called to any provision of the statutes of this State that would seem to prohibit such holding, neither am I prepared to say that the duties of the two offices are such as to render them incompatible in fact. I do not find that the Supreme Court has ever expressed itself upon the proposition or upon a similar situation. In the absence of any prohibitory statute and adverse holding by the court, I do not think that these two offices should be regarded as incompatible. Such being the case, it is my opinion that they may be held simultaneously by one person.

With reference to the right of a village council to vote a salary to the members thereof, I would call your attention to section 2747 of the Compiled Laws of 1897. I assume that the particular village to which your inquiry refers is incorporated under and governed by the general village law. If such is the case, then the president and trustees are required to serve without compensation. Under such a charter provision, it would not be competent for the council to provide for the payment of a definite salary, nor make compensation by way of the furnishing of free electric current and water service. Such attempted action must be regarded as a nullity, and one receiving such service is, of course, liable to pay therefor.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

MICHIGAN RAILROAD COMMISSION. A Company engaged in the transportation of freight wholly by water is not required, under the terms of Act 300 of 1909, to file freight tariffs with the Railroad Commission.

January 6, 1916.

Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—You have referred to this Department your files with reference to the application of the Cheboygan Transfer Company to be recognized by your Commission as a common carrier and for authority to file tariffs for carload and less than carload freight. From the correspondence submitted it appears that this Company is engaged in the transporting of freight by water between Olds dock on the East side of the Cheboygan River, at Cheboygan, Michigan, to the joint landing of the Detroit and Mackinac Railway Company and the Michigan Central Railway Company on the West Side of the Cheboygan River in the same City.

The principal thing to be determined in this matter is whether the business of said Company is such as to require a filing of freight tariffs

with the Michigan Railroad Commission. Section 10 (a) of Act 300 of the Public Acts of 1909, the same being Compiler's Section 66 of the laws relating to railroads, revision of 1913, provides, in part, as follows:

"Every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection in each of its depots and offices, schedules showing all rates, fares and charges for transportation, both of passengers and property * * * * *"

In view of the above it becomes necessary to determine who are common carriers within the meaning of the Act.

Section 3(a) of the Act, the same being Compiler's section 43 of the Laws relating to Railroads, Revision of 1913, provides as follows:

"The term 'common carrier' as used in this act shall be construed to mean and embrace all corporations, companies, individuals, associations of individuals, their lessees, trustees or receivers appointed by any court whatsoever who now or may hereafter own, operate, manage or control as a common carrier in this State, any railroad or part of any railroad, whether operated by steam, electricity or other motive power, or cars or any other equipment used thereon, or bridges, switches, spurs, tracks, side-tracks, terminal facilities, or any docks, wharves or storage elevators used in connection therewith or any kind or terminal facilities used or necessary in the transportation of persons or property designated herein, and also all freight depots, yards and grounds used or necessary for the transportation or delivery of any said property and whether the same are owned by said railroad or otherwise; or any express company, car loaning companies, freight or freight line companies and all associations or persons, whether incorporated or otherwise, that shall do business as common carriers upon or over any line of railroads in this State, or any common carrier engaged in the transportation of passengers and property wholly by rail or partly by rail and partly by water."

It is apparent from an examination of the correspondence submitted, and particularly from the letter of this Company to the Commission dated December 8th, 1915, that said Company has misconstrued the reference in Compiler's section 43 above quoted, to "docks, wharves or storage elevators used in connection therewith, or any kind of terminal facilities used or necessary in the transportation of persons or property designated herein." This language refers back to "corporations, companies, individuals, association of individuals, their lessees, trustees or receivers appointed by any court whatsoever who now or may hereafter own, operate, manage or control as a common carrier in this State, any railroad or part of any railroad." In other words, the term "common carrier" under this Act is not to embrace all corporations, companies, etc., who own, operate or manage docks, wharves, storage elevators or other terminal facilities, but the reference to docks, wharves, storage

elevators and terminal facilities is for the purpose of making clear the extent of jurisdiction of your Commission in dealing with common carriers operating, managing or controlling railroads. The Cheboygan Transfer Company is not a railroad company; neither is it conducting a railroad business. So that if it be considered as a common carrier insofar as the filing of tariffs is concerned it must be by virtue of the concluding words of Compiler's section 43 which extends the jurisdiction of the Commission to "any common carrier engaged in the transportation of passengers and property wholly by rail or partly by rail and partly by water." I assume from the correspondence submitted that the Cheboygan Transfer Company is an independent corporation whose sole business is transportation by water, and that it is not subsidiary to or a part of any railroad company. If this be true, and it is doing strictly an independent business, then it can not be embraced within said section for the reason that its business is not wholly by rail or partly by rail and partly by water, but its business is wholly by water and consequently is excluded from the operation of the Act by the express language of the same. We would, therefore, advise that your Commission notify the Cheboygan Transfer Company that it is not required to file tariffs with your Commission.

Files submitted are herewith returned,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O—encls.

MICHIGAN RAILROAD COMMISSION. Various features of the petition of the Dunbar Stone Co., et al. vs. Michigan Central, et al., discussed.

January 6, 1916.

Michigan Railroad Commission, Lansing, Michigan:

Attention Mr. Glasgow.

Gentlemen—You have submitted to this Department certain files with reference to a petition filed by the Dunbar Stone Company, et al. vs. the Michigan Central, Grand Trunk, Lake Shore and Detroit Terminal Railroads, together with a request that we advise as to your action in the premises with respect thereto.

From the papers submitted it appears that the petitioners are dealers in sand, gravel, crushed stone and crushed slag within the switching limits of the City of Detroit, and that they transport annually large quantities of such products within the switching limits of the said City and that said product is now being transported within such limits over the lines of the defendant companies. The petitioner complains of defendants rates for the transporting of said products. With respect to the rates of the Grand Trunk Railway it is claimed that the same are excessive for shipments originating and terminating on its own line as well as to inter line rates where the movement either originates or terminates on said line. With respect to the rates of the other defendants no complaint appears to be made with respect to one line rates, but the complaint is based upon the fact that the aggregate of the various rates

on inter line movements is excessive. The petition sets forth what is claimed to be a fair and adequate rate covering movements within said switching limit, and petitioners pray for an order of your Commission establishing reasonable and proper rates.

Each of the defendants have filed a motion to dismiss the petition and such motions are, in a general way, based upon the same grounds. The motion of the Grand Trunk Railway Company is based, in the main, upon the following propositions:

(a) The petition sets forth no fact or circumstance which it is alleged makes the rates unlawful or unreasonable;

(b) Because the petition does not state that the defendant company has refused or neglected to transport the said products between points on its line within said limits, and that for the reason that the Michigan Railroad Commission is without jurisdiction to establish through routes or joint rates from the lines of the defendant company to the lines of any of the other of said defendants;

(c) Because the petitioner does not state that it has requested the Grand Trunk Company, or any of the other defendants to establish, voluntarily, through routes or joint rates within the limits of said City, or that said defendants have refused so to do;

(d) That it does not appear in the said petition that there is no reasonably satisfactory through route and joint route in existence within said City;

(e) That the petition does not set forth the routes sought to be established;

(f) That the defendant company is not required by law, or otherwise, to establish through routes and joint rates with the other defendants, within the limits of said City;

(g) That no facts or circumstances are stated in the petition conferring any authority on the Commission to make an order requiring restitution or reparation to petitioners for services rendered in the past;

(h) Because the allegations of the petition are otherwise vague, uncertain and indefinite.

The motions of the other defendants are similar in character except that the motions of the Michigan Central Railroad Company and the Detroit Terminal Railroad Company set up the fact that the rates for transporting the said products where the movement originates and terminates on the same lines were established by an order of the Commission made and entered in 1913, and that the Dunbar Stone Company, one of the complainants, was complainant in the proceeding resulting in such order.

From an examination of the entire file it would appear that the complainants make no direct attack upon the one line rates of either the Michigan Central, Lake Shore or Detroit Terminal Railroad companies, but that relief is sought against the one line rate of the Grand Trunk. It is apparent, however, that the principal cause of complaint set up in said petition is that the aggregate of the rate when the product is moved over more than one line is excessive and unreasonable. The apparent answer of the various defendants to this proposition is that your Commission is without jurisdiction in the premises for the reason that the statutes of Michigan relating to through routes and joint rates is

not applicable to terminals and terminal facilities, contending that the said statutes are intended to cover only movements between distinct towns or terminals. Other arguments are made by defendants with respect to the various provisions of the statute providing for the establishment of through routes and joint rates, but we deem it unnecessary to take these matters up and discuss them in detail.

As before stated, the principal cause of complaint as set forth in this petition is unjust and unreasonable rates where the movement is over two or more lines, and while there is some force to the contentions of the defendants with respect to the legislative intent in enacting the statutes providing for the establishment of through routes and joint rates, we are not sufficiently impressed with the arguments presented by defendants so that we would feel justified in advising your Commission to dismiss the petition for lack of jurisdiction but on the contrary we are of the opinion that your Commission has jurisdiction to regulate respecting routes and rates on intra city movements.

Neither are we of the opinion that the petition should be dismissed for the reason that the same is not an express application to rescind, alter or amend the order of the Commission previously made. We would, therefore, advise that the Commission overrule the motions filed to dismiss the petition and would suggest that the Commission proceed to a hearing of the subject matter, at which time of course the entire matter, not only with reference to the facts, but the law as well may be taken up and discussed.

Files submitted are herewith returned.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-pi-O.—encls.

STATUTES. The Judicature Act insofar as it provides for the creation of the Fortieth Judicial Circuit is not superseded by Act 303, P. A. 1915.

January 10, 1916.

Hon. O. B. Fuller, Auditor General, Lansing Michigan:

My dear Mr. Fuller—You have recently requested my views with reference to the legal status of the Fortieth Judicial Circuit of this State. Act 314 of the Public Acts of 1915, the so-called Judicature Act, provides for such Circuit, and inasmuch as that measure became operative on the first of this month, it follows that said circuit is now in existence assuming the act referred to to be controlling. The Judicature Act was approved by the Governor on the 18th day of May. On the following day, May 19th, 1915, Act 303 of the Public Acts of 1915, was passed by both houses of the legislature over the Governor's veto. The latter measure provides also for the Fortieth Judicial Circuit declaring, however, that the same shall exist from and after the first day of December, 1916. Subsequent provisions of the act relate to the holding of an election, the tenure of office of the circuit judge and the nomination of candidates for such office. The question now at issue is as to which of these acts is to be regarded as controlling insofar as the Fortieth Judicial Circuit is concerned.

It is settled by the decisions of the Supreme Court of this State that when two legislative enactments are repugnant, the one that is subsequent in point of time of its passage by the legislature shall be deemed to be controlling. This rule applies to acts passed at the same session of the legislature. In such a case, however, the presumption is very strong that the legislature intended that both acts shall be given force and effect. In view of this presumption, the statute first enacted will not be regarded as superseded or repealed, either wholly or in part, unless the repugnancy is apparent. In the instant case, Act 303 must be regarded as subsequent in point of time in its passage, it being finally enacted by the legislature on the 19th of May. However, under the presumption above suggested, we must, if possible, reconcile these two enactments and treat both as operative. It does not occur to me that the fact that the Judicature Act, so-called, did not become operative until the first of January, 1916, alters the situation in any way. Act 303, not being expressed to take effect on a given date must be regarded as having become operative, potentially, on the 24th of August last, that is, ninety days after termination of the session. The fact, that no action might be taken thereunder until some time subsequent to that date, does not as a legal proposition postpone the time of taking effect. (*Hopkins v. Scott*, 38 Neb. 661.) Thus Act 303 became effective before the Judicature Act went into operation pursuant to the date fixed therefor by the legislature. As stated the postponed operation of the Judicature Act does not alter the situation in any way, the time of passage being controlling rather than date of operation. (*Belding Improvement Co. v. Belding*, 128 Mich. 79; *Dewey v. Des Moines*, 101 Ia. 416; *Dowty v. Pitwood* (Mont.) 57 Pac. 727; *State v. Newark*, 57 N. J. L. 298; *Board of Education v. Tafoya*, 6 N. Mex. 292; *Heilig v. Pruyallup*, 7 Wash. 29.)

While the weight of authority seems to be clearly in favor of the proposition that in case of clear repugnancy, the act that is subsequent in time of passage must be regarded as controlling, I am impressed in the instant case that we may and should construe Acts 303 and 314 as not being necessarily in conflict. Insofar as the matter under consideration is concerned, the provisions of each are designed to accomplish the same end, that is, the establishment of the Fortieth Judicial Circuit out of the County of Lapeer. The essential difference lies in the date at which such circuit is to come into existence. It scarcely seems that such difference standing alone, should be given the effect of rendering the two measures wholly repugnant to the extent that one must give way to the other. It has been repeatedly declared by the Supreme Court of this State, and by the courts of last resort of other states, that statutes *in pari materia* must be construed together. Especially is this true when, as in the instant case, both statutes were passed at the same session. Thus in *Simpkins v. Ward*, 45 Mich. 559, it was held that an act relating to the alteration of the boundaries of school districts must be read in connection with other provisions of the statutes relating to schools. Similarly in the case *In re Kreiner*, 156 Mich. 296, the same rule was applied, the court quoting with approval the general rule as laid down in *Lewis' Sutherland on Statutory Construction*, section 443, as follows:

"Statutes which are not inconsistent with one another and

which relate to the same subject matter are in *pari materia* and should be construed together; and effect should be given to them all although they contain no reference to one another and were passed at different times."

In *Houston & Texas Ry Co. v. State*, 62 S. W. 114, the Supreme Court of Texas had under consideration measures passed at the same session. Commenting upon the situation before it, the court said:

"It is to be presumed that different acts passed at the same session of the legislature are imbued by the same spirit and actuated by the same policy and they should be construed each in the light of the other."

The Supreme Court of Massachusetts in *Sheldon v. B. and A. R. R. Co.*, 51 N. E. 1078, laid down the general rule in the following terms:

"Where statutes are part of a general system relating to the same class of subjects and rest upon the same reason they should be so construed if possible as to be uniform in their application and in the results which they accomplish."

The cardinal rule of statutory construction is, of course, to carry out the legislative intent as expressed in the measure or measures under consideration. To adopt the view in the instant case that the provisions of the Judicature Act relative to the Fortieth Judicial Circuit have been superseded by Act 303 would lead to a situation that certainly could not have been intended by the legislature. As drawn, the Judicature Act divides the State into forty judicial circuits declaring that the Fortieth shall consist of the County of Lapeer. If this provision be regarded as not operative because of the subsequent passage of Act 303, then the County of Lapeer, assuming, of course, the validity of the Judicature Act, cannot be regarded at the present time as constituting a part of any judicial circuit and will not exist as a separate circuit until the first of December, 1916. It was declared by the Supreme Court of this State in *People v. Schoenberg*, 161 Mich. 88, citing *Lewis' Sutherland on Statutory Construction*, section 367, that

"An interpretation of a statute which must lead to consequences which are mischievous and absurd is inadmissible if the statute is susceptible of another interpretation by which such consequences can be avoided."

I believe that this rule applies with equal force where the question involved is not merely the interpretation to be placed on the language of a particular act, but is rather the determination of the precise relation existing between two measures enacted by the same legislative body and which are in *pari materia*.

In accordance with these suggestions, it is my opinion that the Fortieth Judicial Circuit must be regarded as now existing under and by virtue of the provisions of the Judicature Act and that its existence under said act dates from the first day of January, 1916. Such view does not interfere with the operation of Act 303. Rather the procedure thereby con-

templated may be observed in the manner provided and without in any way violating the provisions of the Judicature Act. The fact that such circuit has been in existence prior to the first of December, 1916, will not, as a matter of law, alter the situation that will be presented. In this way, I believe that the intention of the legislature may be carried out fully, and as suggested at the outset, both measures in question may be given force and effect. You will note that I have assumed the constitutionality of both acts and I shall proceed on that assumption unless and until the Supreme Court of the State declares one or both to be invalid.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

DRAIN LAW. Orders may not issue to pay commissioners serving under an application to clean out a drain traversing more than one county before the contract has been let.

January 10, 1916.

Mr. X. A. Boomhower, Prosecuting Attorney, Bad Axe, Michigan:

Dear Sir—I note from your letter of the 6th instant that proceedings have recently been instituted having for their purpose the cleaning out of a certain drain situated partly in Huron County and partly in Tuscola County. As I understand the matter special commissioners have been appointed and have acted upon the question of granting the application. The drain commissioner of one of said counties wishes to issue orders to pay the commissioners, while the other commissioner takes the position that no drain order may properly be issued until the contract for cleaning out the drain has been let. You state that such action has not as yet been taken. There is, however, some money still left in the fund of the drain as originally constructed and I infer that the commissioner who desires to issue the orders takes the position that the same may be drawn on that fund.

Section 2 of Chapter 8 of the drain law provides that in case there is a surplus in any drain fund, the drain commissioner may "without application or advertisement pay out of the same a reasonable compensation for cleaning out any obstruction that may accumulate * * *" It will be noted that this proviso contemplates action by the drain commissioner when no application for the cleaning out has been formally made. Furthermore, an expenditure is authorized out of the drain fund only for the actual cleaning out. It seems to follow as a matter of necessary inference from the provisions of this section that in any case where an application has been made, expenses incurred in connection with proceedings thereunder must be paid as provided in the drain law and without reference to the fact that money still remains in the original fund.

Section 8 of Chapter 7 has reference to cleaning out of drains traversing more than one county and in accordance therewith the same procedure is to be observed as in the case of the original establishment of such a drain. Accordingly, orders are to be drawn by the commissioners acting jointly in the same manner as orders may issue in cases

where the drains to be established or cleaned out is situated wholly in one county. Section 2 of Chapter 9 forbids the issuance of an order against any drain fund until the drain has been located and "a contract for building the same let." This restriction undoubtedly applies to proceedings for the cleaning out, widening or straightening of drains as well as to proceedings for construction thereof in the first instance. Section 1 of Chapter 8, as amended by Act 202 of 1915, must, I believe, be so read as to sustain this view. I am impressed also that the restriction referred to as laid down in section 2 of Chapter 9 must be construed as applying to drains traversing more than one county. It was apparently the intention of the legislature that the procedure in such cases, whether of the original establishment of a drain or of the widening, deepening, extension or cleaning out thereof, should follow that which is prescribed in the case of a drain situated wholly in one county. I am constrained to the opinion, therefore, that the orders may not properly issue under the circumstances, and for the purposes suggested in your letter.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. Construction of State reward roads within a city under section 18 of Chapter 4 of the highway law as amended by Act 75 of 1915 is considered.

January 10, 1916.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Michigan:

Dear Sir—I am in receipt of your communication of the 6th instant with which you enclose copy of letter addressed to you by Mr. L. F. Miner, City Attorney of Owosso. You have asked that I give to you my views with reference to the various matters therein referred to, inasmuch as the same are of general interest in connection with the enforcement of certain provisions of the State Highway Law. It appears that Shiawassee county has adopted the provisions of Chapter IV of said law and is now operating under the so-called county road system. The City of Owosso is governed by a charter adopted pursuant to the home rule act of 1909 and has at the present time a commission form of government. It is proposed that the county issue bonds for the purpose of building roads and if the proposition to raise money in such way is carried, the county road commissioners desire to use a part of such money in constructing State reward road within the corporate limits of the City of Owosso. Section 18 of Chapter 4 of the highway law was amended by Act 75 of the Public Acts of 1915 and in accordance with said section in its present form, State reward roads may be constructed by county road commissioners within the corporate limits of cities or villages. It is provided, however, that before any such road is taken over as a county road, consent of the proper authorities of said city or village must be obtained. In its amended form the section clearly contemplates that the county may receive the State reward upon such road improved in accordance with the prescribed regulations within the

limits of a city or village. This, I believe, covers the first inquiry stated by the City Attorney.

The question is also raised as to whether or not the road must be actually taken over as a county road, the necessary consent by the municipal authorities therefor being given before the estimates and plans of the commissioners are submitted to and approved by the board of supervisors. I am impressed that this question must be answered in the affirmative. If a contrary view were taken, it is obvious that the board of road commissioners might submit plans covering roads within corporate limits, the plans and estimates might be approved by the board of supervisors and the money actually voted, without it being definitely determined whether or not the commissioners had the right to expend money on such road. It is conceivable that a case might arise in which the permission would be refused by municipal authorities and a contingency thus presented clearly not within the contemplation of those provisions of the statute relative to the submission of estimates and plans to the board of supervisors and the consequent action thereon. I do not think, however, that the board of county road commissioners may properly prepare plans or estimates with reference to any portion of a highway within the corporate limits of a city or village unless and until permission has been given to take over such highway as a county road and the board has formally decided to take such action.

As I understand the situation, it is desired that control of the particular highway in question within the City of Owosso shall be surrendered to the board of county road commissioners for such a length of time only as will permit the making of the necessary improvements thereon. The same section of the highway law that is above referred to permits a board of county road commissioners to abandon a particular highway as a county road and thereupon the control of such road reverts to the township or municipality having jurisdiction thereover at the time when action was taken to make the same a county road. Under this provision it would undoubtedly be competent for the commissioners after the road in question had been improved to vote to abandon same as a county road. Thereupon, pursuant to the provision of the statute, the right of control thereover would revert to the city. Mr. Minor raises the question, however, as to whether a contract may be entered into between the city and the county road commissioners providing for such abandonment immediately after the improvement is made, which could be enforced. With reference thereto, I am constrained to the opinion that the matter of taking over or abandoning a particular road must be regarded as an official act and that the board of county road commissioners could not contract or stipulate in advance what their action in such a matter would be. It is obvious that conditions might radically change in a given locality and that action of this kind which might at a given date seem to be for the best interests of the public prove at a subsequent time to be undesirable. Such an agreement as is suggested would in my opinion be contrary to public policy in that it would impose upon the board of county road commissioners an undue restraint in the exercise of the official discretion thereof.

The county road law clearly contemplates that money raised within the county for highway purposes shall be expended by and under the

direction of the board of county road commissioners. It would not therefore, be legal to turn over to municipal authorities any portion of such money to be expended within the corporate limits in the improvement of city streets and highways. Neither would it be competent for the board of county road commissioners to surrender to municipal authorities the entire charge of the work being done on any county road. Such action would be an evasion both of the letter and the spirit of the statute and, in my opinion, could not be sustained. This, I believe covers the inquiry along this line.

It appears also that a certain interurban railroad is operating through the City of Owosso, having a franchise by which the conditions of such operation are governed. It is provided therein that in case the city shall pave any part of one of the streets upon which such railway is operated, it shall be the duty of the company to pave that portion lying between the tracks and for a distance of 18 inches outside of the same. In view of the proposed improvement of certain of the highways along which the interurban track is situated and the taking over of the same as a county road, the question arises as to whether or not the street car company may be compelled to construct a portion of the pavement in accordance with the provision of the franchise referred to. If I understand the situation correctly, I am impressed that the question must be answered in the negative. The franchise is, of course, a contract between the city and the street railway company and the specific provision in question was incorporated therein for the protection and benefit of the city alone. If this particular highway is taken over by the board of county road commissioners as a county road, it ceases to be to all intents and purposes in legal contemplation, a municipal street, and the city, as a distinct municipal corporation, has no direct interest in the making of the improvement and no authority to say how or by whom such improvement shall be made. It can scarcely be claimed in my opinion that the board of county road commissioners is subrogated to any of the rights possessed by the city under and by virtue of the provisions of the franchise granted to the street railway company. The statute fails to make any provision therefor and it scarcely seems that the general principles that are involved can justify any such claim. The street railway company is entitled to insist that its agreement was made with the city and that liability to construct pavement might be imposed upon it only when the city undertook to make such improvement.

It is provided by the amendment to the highway law here involved that where any street or part of a street in a village or city is taken over, the same shall not be improved by the expenditure of county road funds to a greater width than sixteen feet. It is suggested in the instant case that such width would not be sufficient and that it would be desirable that the city construct additional pavement on each side. Such action would involve the levying of special assessments against the abutting property owners and the question is raised as to whether such action might be taken. Stated somewhat differently the point at issue is whether or not the city may assist in improving a certain street or highway within the corporate limits which has been taken over by the board of county road commissioners as a county road. It occurs to me that such suggested co-operation may not legally be carried out in the

manner indicated. As before stated, when a street or highway is taken over it thereby becomes a county road and in its improvement, the city as a separate corporation has no direct interest. Neither is it subject to the control of the municipal authorities. Such being the case, the raising of money under the charter for its improvement may not be sustained.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

BOARD OF SUPERVISORS. May not establish a county reward system for improving highways even though such action be ratified by a majority of the electors.

January 10, 1916.

Mr. Willis L. Lyons, Prosecuting Attorney, Howell, Michigan:

Dear Sir—I am in receipt of a request for an opinion submitted by a committee of the board of supervisors of your county which you have forwarded. I assume that you join in the request for my views and, therefore, I shall indicate the same to you. It appears that at a recent session of the board, the following resolution was adopted:

“Be it hereby resolved that we the board of supervisors of the County of Livingston submit to the electors of Livingston County to be acted on at the annual spring election the following:

BE IT RESOLVED, That the County of Livingston pay to each township two hundred dollars (\$200) per mile for each mile of State reward road built and accepted by the State Highway Commissioner on or before the first day of October of each year.”

The question at issue is as to the legality of making the payments contemplated by this resolution assuming that the same is ratified by the electors of the county. I am advised that Livingston County is not now operating under the provisions of the so-called county road law.

The various purposes for which a board of supervisors may raise money and likewise the purposes for which expenditures may be made under the authority of the board, are defined by various statutes of this State. There is no authority to raise money in any case, or to expend the same unless provision therefor has been made by the legislature acting pursuant to the Constitution. In the instant case my attention is called to no law of this State that can in my opinion be construed as authorizing the action apparently contemplated by the resolution adopted by your board of supervisors. Neither do I find any provision authorizing the people of the county to invest a board with such power, or to ratify such action. The purpose of the resolution, as I understand it is to initiate a system of county reward for improved highways in addition to the present State reward system. I am constrained to the opinion that there is no authority for such proceeding granted by the statutes of this state and in consequence, payments contemplated

by this resolution may not legally be made even though a majority of the electors of the county might vote in favor thereof.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. Requirements and provisions of the State Reward trunk line highway act considered.

January 10, 1916.

Mr. Ray Hart, Prosecuting Attorney, Midland, Michigan:

Dear Sir—Act 334 of the Public Acts of 1913 makes provision for the establishment of so-called trunk line highways passing through various sections of this State. Under subdivision 3 of said act, as originally enacted and as amended by Act 96 of the Public Acts of 1915, a certain division of said road extends north from Breckenridge to the prime meridian line then along said line “as near as practicable” to connect with another division. Based upon this subdivision and the entire act, you have submitted certain inquiries and have requested my views with reference thereto.

Your inquiry is whether or not such trunk line highway is a State road within the meaning of section 26 of Chapter 1 of the general highway law. The action referred to reads as follows:

“All State roads which are now or may hereafter be laid out in this State, shall be under the care of the commissioners of highways of the several townships through which the same shall pass and subject to be by them opened and kept in repair in the same manner as township roads, but such State roads shall be altered or discontinued only by the boards of supervisors of the counties in which they may be situated.”

It will be noted that this section has reference to the laying out of highways in the first instance and to the maintenance thereof thereafter. Undoubtedly the expression “state roads” is used herein as meaning highways that have been laid out by legislative authority. The purpose of Act 334 of 1913 was to provide for the improvement in accordance with certain specifications of prescribed routes, the aggregate of said routes to be designated as State reward trunk line highways. It does not occur to me that the improvement of any portion of a route thus designated can be, ipso facto, regarded as rendering the same a “State road” as such expression seems to have been used in section 26 of Chapter 1 of the highway law, or as requiring that such road be necessarily maintained thereafter as township roads. If the county road commissioners in any county operating under the county road system see fit to take over any part of a route designated by Act 334, and thereafter improve and maintain the same as a county road conforming to the requirements of trunk line highway act, such road must be regarded as subject to the general incidents pertaining to county roads. The purposes of the measure under consideration is, as suggested, to provide for

the improvement of certain specific highways and the payment of a reward thereon by the State to the particular township, county or good roads district by which the improvement is made. In other words, the fact of the improvement in accordance with the act does not change the character of the road.

Your second question refers to the legality of deviating from the line of the meridian referred to in the third subdivision of section 2 of which mention is above made. It will be noted that the statute does not require that the line be followed exactly, the qualifying words "as near as practicable" being used. Undoubtedly it was the intention of the legislature that some deviations or detours from the line would be found necessary or at least practicable. Such being the case, as indicated by the wording of the statute, I believe that the spirit and the letter of the law will be complied with by following the line as nearly as possible, making only such charges therefrom as are reasonably required for the doing of the work in a satisfactory manner.

The tenth subdivision of section 2 of the measure provides for the making of preliminary surveys by the State Highway Commissioner and the submission of the results of his investigation to the county road commissioners, township boards, the good roads commissioners, or boards of supervisors as the case may be. The statute as originally enacted and as amended at the session of 1915 requires the submission of maps showing feasible routes and approximate costs. It is then required by the amended act that "the said board shall decide upon one of the said routes which shall then be known as a part of the State reward trunk line highway system." Further provision is also made by virtue of which the State Highway Commissioner may designate the particular route in case "said board" fails to do so within a reasonable time.

Your third and fourth inquiries relate to the changing of a route by a board of good roads commissioners of a district, or by said board acting in conjunction with the State Highway Commissioner, after the board of supervisors has approved the route, without the consent of the latter board.

It seems to be the intent of the statute that when a particular route has been agreed upon, its status as a part of the State reward trunk line system is thereby fixed. The provision referred to by which the State Highway Commissioner may act in case the local board does not do so within a reasonable time, must be taken to imply that the legislature deemed it desirable that all parts of the system should be definitely fixed "within a reasonable time." It would scarcely be consistent with this intention to permit the changing of routes once officially designated at the pleasure of a local board. If such authority be deemed to exist, a change in the personnel of a given board might result in changes in routes even after expenditures have been made and work actually begun. I am impressed, therefore, that action that is once taken pursuant to the statute may not thereafter be nullified and set aside.

Trusting that these suggestions will indicate my views upon the various inquiries submitted by you, I am,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

MOTHERS' PENSION LAW. A mothers' pension can not be granted to a person whose husband is blind unless said husband is confined in a State Hospital or other State institution.

January 10, 1916.

Miss Roberta Griffin, President, Michigan Association for the Blind, 55 Barclay St., Grand Rapids, Michigan:

Dear Madame—I am in receipt of your communication of the 29th ult. wherein you request to be advised if a mother's pension can be allowed in a case involving the following statement of facts: The family is afflicted with extreme poverty. The father, Mr. John Doe, is permanently blind and the best medical authorities that have been consulted in his behalf, state that it will be impossible to do anything for Mr. Doe in a medical way. The wife, Mrs. Doe, is a very capable woman and a good mother and is doing everything possible to keep the home together.

Section 7 of Act 308 of the Public Acts of 1915, provides, in part, as follows:

"That if the mother of such dependent or neglected child is unmarried or divorced, or is a widow, or has been deserted by her husband, or if her husband has been declared insane or is feeble minded, epileptic or blind and is confined in a State hospital or other State institution, or is the wife of an inmate of some State penal institution serving sentence therein for crime, or of an inmate of a hospital for the treatment of insane persons who is confined therein for the purpose of being treated for insanity or other diseased mental condition and such mother is poor and unable to properly care and provide for said child, but is otherwise a proper guardian, and it is for the welfare of such child to remain in the custody of its mother, the court after investigation and report by the probation officer of the county, may enter an order finding such facts and fixing the amount of money necessary to enable the mother to properly care for such child, such amount not to exceed three dollars a week for each child."

You will note that the Act provides that a pension may be granted if the husband has been declared insane, or is feeble minded, epileptic or blind and is confined in a State hospital or other State institution. It would seem apparent from the foregoing that a pension can not be granted under those circumstances unless the husband is confined in a State Hospital or other State Institution.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

R-pi-O

MICHIGAN RAILROAD COMMISSION. The penalty clause contained in Act 259 of 1915 is not intended to restrict the right of public service corporations to issue notes for lawful purposes to periods of twelve months.

January 11, 1916.

Michigan Railroad Commission, Lansing, Michigan :

Gentlemen—We are in receipt of yours of the 8th inst., File No. 142, with reference to certain correspondence of your office with Mr. Arthur H. Ryall of Escanaba, Michigan. The correspondence relates to Act No. 259 of the Public Acts of 1915, the same being an amendment to Act 144 of the Public Acts of 1909, as amended by Act 177 of the Public Acts of 1911.

Section 1 of said Act provides, in part, as follows :

“Any corporation or association except municipal corporations organized and existing, or which may hereafter be organized or authorized to do business under the laws of this State, or any lessee or trustee thereof, or any person or persons owning, conducting, managing, operating or controlling any plant or equipment within this State used wholly or in part in the business of transmitting messages by telephone or telegraph, producing or furnishing heat, light, water or mechanical power to the public, directly or indirectly, and any railroad, interurban railroad or other common carrier may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of facilities or for the improvement or maintenance of service or for the discharge or lawful refunding of obligations: Provided, and not otherwise, That there shall have been served upon the Michigan Railroad Commission an order authorizing such issue and the amount thereof * * * * Provided, That any such person, corporation or association may issue notes for lawful purposes, payable at periods of not more than twenty-four months, without authority from said Commission; but no such notes shall in whole or in part, directly or indirectly, be refunded by any issue of stock or bonds or by any evidence of indebtedness running more than twelve months without the consent of said Commission.”

Section 3 of the same Act provides as follows :

“Any officers, director, agent or employe of any person, corporation or association, who shall cause to be issued any stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, or who shall in any way aid in the issue of such stocks, bonds, notes or other evidences of indebtedness, not authorized by the Michigan Railroad Commission, or under the terms and conditions imposed, or any officer, director, agent or employe of such person, corporation or association, who shall, after the issue of stocks, bonds, notes or other evidences of indebtedness authorized by said commission

upon certain terms and conditions, fail to comply with such terms and conditions so imposed, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the State prison not less than one year nor more than five years."

Mr. Ryall calls attention to the apparent inconsistency of these two sections in so far as they refer to the issuance of notes and asks what construction your Commission places upon the Act as a whole with reference to the same.

The proviso in section 1 above quoted permits the issuance of notes for lawful purposes by corporations, etc., payable not more than twenty-four months from the date of issue, without the consent of your Commission; while Section 3 provides a penalty against the officers, agents or employes of corporations, etc., "who shall cause to be issued any * * * notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof." The two provisions are somewhat inconsistent, but in our judgment it was clearly the legislative intent that the penalty clause is made applicable to the balance of the Act when considered as a whole and it clearly was not intended to prescribe a penalty for the doing of those things expressly sanctioned by the Act itself. You are, therefore, advised that in our opinion your Commission should take the position that corporations, etc., are permitted to issue notes for lawful purposes, payable at periods of not more than twenty-four months, without authority from your Commission, and that the penalty prescribed in Section 3 of the Act applies only to the doing of that which is forbidden by the Act itself.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-pi-O

PRAY ACT. A railroad company might be liable for transporting liquor or beverages containing alcoholic liquor when shipped without the required information on the outside of the package. Question of intent arises the same as in other criminal cases.

January 12, 1916.

Mr. Robert H. Kirschman, Prosecuting Attorney, Battle Creek, Michigan :

Dear Sir—Your communication of the 6th inst. received as follows :

"Some question has been raised as to whether or not railroads, express companies and other common carriers must keep such records of the shipment and delivery of 'cream of hops,' 'pablo' and other alleged soft drinks containing a small percentage of alcohol as are required in cases where the packages are labeled to show shipments of liquor? Is the railroad company or common carrier under any obligation to keep records of any shipment except such as are labeled intoxicating liquors? In other words does the common carrier render itself liable if it fails to keep a record of the receipt and delivery of a shipment of intoxicating liquor which is not labeled as such in accordance with the law?"

In reply thereto would say that Section 2 of Act 381 of the Public Acts of 1913 (the Pray Act) provides that "it shall be unlawful for any person" (which also includes corporations, etc.) "to consign, ship or transport * * * or deliver any of the liquors mentioned in Section 1 of the Act" (namely: vinous, malt, brewed, fermented, spirituous or intoxicating liquor as a beverage) "to any person * * * unless there appears upon the outside of the package containing such liquors the following information: Name and address of consignor," etc. A penalty is fixed in this Section as follows: "Any consignee accepting or receiving any package containing any such liquors upon which appears a *false statement*, or any person consigning, shipping, transporting or delivering any such package, *knowing* that said *statement* appearing upon the outside thereof is *false*, shall be deemed guilty of violating the provisions of this Act."

An examination of the penal provisions of this Section discloses that there is no penalty therein for the unlawful transportation of such liquors where no statement of any kind is attached thereto, the penalty being confined to violating the provisions relative to false statements. However, this section does make it unlawful to transport such liquors without the required information appearing upon the outside of the package.

Section 7 of the Act provides: "Any person, who himself, or by his clerk or employe, shall violate *any* of the provisions of this Act shall, for the first offense, be deemed guilty of a misdemeanor, * * *." The penalty prescribed in Section 7 would, in the absence of any other penalty, be applicable to a violation of Section 2 and this I take it is the intention of the Act.

Your specific question relates to the transportation of such beverages as "cream of hops" and "Pablo" which contain a small percentage of alcohol.

I do not think the amount of alcohol contained in such drinks is material. *People vs. Wilcox*, 152 Mich. 39. The rule would be the same as applies to those containing a higher portion of alcohol.

The determining question is whether want of knowledge on the part of the railroad companies that a shipment received in the ordinary course of business contained the prohibited liquor would relieve them from criminal liability. Upon this question I assume the courts would take much the same position as they have taken with respect to Section 13 of the General Liquor Law, the Legislature having prescribed no other rule of evidence. The question of intent to violate the law, in other words, is left to be dealt with as in other criminal cases. *People vs. Welch*, 71 Mich. 550; *Faulks vs. People*, 39 Mich. 200; *People vs. Hughes*, 86 Mich. 184; *People vs. Garrett*, 68 Mich. 487; *People vs. Neuman*, 85 Mich. 98.

Trusting this sufficiently indicates my views upon the subject, I remain,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

P-pi-O

ARCHITECTS. Act 120, P. A. 1915, construed as to what persons are entitled to registration without examination.

January 12, 1916.

Mr. George D. Mason, President, Board of Registration of Architects,
Detroit, Michigan:

Dear Sir—I am in receipt of your communication of the 28th ult. wherein you request my opinion as to the proper construction of Act 120 of the Public Acts of 1915, entitled “An Act to provide for the registration of Architects and regulating the practice of architecture as a profession.” In the main your inquiries relate to the question as to what persons are entitled to registration as architects without a formal examination.

A proper answer to your questions requires an examination of the entire Act. The purpose of the Act as expressed in its title is to provide for the registration of architects and to regulate the practice of architecture as a profession. I assume that in reality the Act has but one purpose, namely, to regulate the practice, the requirement as to registration being one means of regulating the profession.

Section 1 contains two somewhat unrelated provisions, namely: 1. “No person shall use the title ‘architect,’ or any variation of the same, or use any words, letters or device to indicate that the person using the same is an architect, after six months subsequent to the passage of this Act, *without being registered as an architect*, in accordance with the provisions of this Act.” 2. “Any person who shall have been engaged in the practice of architecture under the title of architect prior to the time this Act takes effect, may secure such certificate in the manner provided by this Act.” This last portion of Section 1 is incomplete in itself and apparently makes a distinction in favor of those persons engaged in the practice of architecture prior to the time the Act took effect. The Act, it may be said in passing, took effect August 24th, 1915, so that the provision relates to those engaged in the practice of architecture prior to August 24th, 1915. The provision is incomplete, as above stated, because it contemplates some other provision in the Act to give it complete effect. An examination of the balance of the Act discloses only one section which appears to supplement the provision referred to, that is, Section 20 which provides as follows:

“The Board of Examiners in lieu of an examination shall accept satisfactory evidence as to the applicant’s character, competency and qualifications, and satisfactory evidence that the applicant has been actually engaged in the practice of architecture under the title of architect on his own account or as a member of a reputable firm or association *prior to February five, nineteen hundred fifteen, providing the application for such certification shall be made within six months of such date.*”

In comparing the provisions of Section 1 with those of Section 20 it will at once be seen that the two sections are inconsistent with one another with relation to date or time that fixes the status of those en-

titled to registration without examination, in that Section 1 refers to a time "prior to the time this Act takes effect," while Section 20 refers to a time "prior to February five, nineteen hundred fifteen," a difference of a little over six months. In other respects the two sections evidently refer to the same class of applicants and Section 20 is evidently intended to supplement the provisions of Section 1 with respect to such class. It will further be noted that section 20 prescribes as a condition that "application for such certification shall be made within six months of such date." The words "such date," placed as they are, can only relate to February 5th, 1915. In other words, the applicant is required to file his application not later than August 5th, 1915, at which time the Act had not yet taken effect and there was no Board or person to whom the application could be made. This provision is plainly an error on the part of the Legislature, is impossible of fulfillment, and as a restriction on the right of persons who are entitled to be registered without application, must be treated as a nullity. Otherwise there is no exemption in favor of any class because of the impossibility of fulfilling the requirement.

I am of the opinion that the provision thus made, and which is an impossible one, should be treated as surplusage and therefore entirely disregarded.

Sutherland's Statutory Construction, Sections 384, 410 and 497.

With reference to the apparent inconsistency between the dates prescribed by Section 1 and Section 20 respectively, it would appear from section 1 that the exemption from formal examination was intended to apply to all persons engaged in the practice of architecture prior to the effective date of the Act. The word "prior" as used both in section 1 and in section 20 means simply "before." It must be given the same meaning in both instances. No particular length of time is prescribed by this word, so that the status of a person applying for registration without examination would be determined by reference to the condition obtaining at the date fixed.

Did the Legislature intend that the date fixed in Section 20 should be a further limitation on the class referred to in Section 1? As said above, Section 20 refers to the same class as is referred to in Section 1. Had Section 1 been complete in itself, and contained no reference to any subsequent provision, it might be said that the two sections referred to different classes. But this is not true, and the two sections must, therefore, be construed as if Section 20 followed immediately after the last sentence in Section 1. Now the provision in Section 20 relative to February 5th, is certainly definite and clear and such as to preclude the idea of a mistake, and while such date is arbitrary, yet it is not unreasonable. In accordance with the rule of statutory construction that each provision of an Act must be considered and if possible given effect, and with the further rule that the words of limitation prevail over indefinite or general expressions, I am of the opinion that the time fixed in Section 20 must prevail and that therefore only those persons who were engaged in the practice of architecture prior to February 5th, 1915, are entitled to registration without examination.

Giving the Act the construction indicated above, the next pertinent question is "Who is an architect?" To answer this question we must

first look to the Act itself and if it contains a definition we are not at liberty to look further. Section 2 provides as follows:

"Any person engaged in the business of drawing plans and specifications for the erection, enlargement or alteration of buildings for others, and to be constructed by other persons than himself, is hereby declared to be an architect within the provisions of this Act. The term "building" in this Act shall be understood to be a structure, consisting of foundations, walls and roof, with or without the other parts; but nothing contained in this Act shall be construed to prevent any person, firm or corporation, whether owner, contractor, mechanic or builder, from making plans or specifications for, or supervising the erection, enlargement or alteration of any building that is to be constructed by any such person, firm or corporation, or its agents, servants or employees."

The test provided seems to rest upon the phrase "drawing of plans and specifications for the erection, enlargement or alteration of buildings for others, and to be constructed by other persons than himself," and the exception provided for in the latter part of section 2 makes the distinction clear. This definition serves two purposes: (a) As a test for the violation of the Act; (b) As the basis of exemption from examination. The final and severest application of the definition must, however, be considered with reference to the query "when is the Act violated?" However, with regard to the right of a person to be registered without examination, we must look, not only to the provisions of sections 1 and 2, but also to the valid provisions of Section 20. Section 20 provides the final test as to who may be registered without examination, and to that extent must be distinguished from section 2 which merely defines the term "architect." In other words, a person might be an architect according to the definition given in section 2, but if not complying with the provisions of section 20 would still not be entitled to registration without examination.

The component requirements of section 20 are (1) Satisfactory *evidence* as to the applicant's character, competency and qualifications; (2) Satisfactory *evidence* that the applicant has been *actually engaged* in the practice of architecture; (3) Under the title of architect; (4) On his own account; (5) Or as a member of a reputable firm or association. These requirements being specifically prescribed the Act must be construed as if it contained the express words "and none others may be so admitted."

The various phrases which are used in Section 20, outside of their dependence upon the meaning of the word "architect," should require but little elucidation. The word "architect" as here used has already been defined in section 2 of the Act and no other definition is necessary. The term "on his own account" means "as principal" and would therefore preclude that class of workmen who are employed by other architects. The term "as a member of a reputable firm or association" evidently refers to a firm or association of architects and in my opinion should be so construed. The term "actually engaged in the practice of architecture," means just what it says, and is undoubtedly meant to in-

clude only those persons who were actively engaged at the specified date as distinguished from those who may have been engaged at some prior time but who were no longer following the profession.

In your communication you refer to several classes of specialists who are engaged in lines of work more or less closely allied with architects, and you desire to be informed whether these various classes (a) would be required to be registered as architects before continuing to follow their present professions; (b) would be entitled to registration without examination.

You have also submitted for my examination a considerable amount of literature bearing upon the academics of your profession. These have been carefully read. However, as indicated above, it seems to me that the statute has scarcely left the question an academic one, the definition given in section 2 robbing the law of what would otherwise contain an interesting question. I do not think the scope of the Act can be extended by construction beyond its own plain requirements and definitions. It therefore follows that specialists who are not engaged in the business of drawing plans and specifications for the erection, enlargement or alteration of buildings for others, and to be constructed by other persons than themselves, could not be regarded as architects and there would be no necessity for their registration, in order to carry on their business. Neither does the law disturb those who are drawing plans and specifications for themselves and not for the use of others and they are not required to be registered as architects but they could not use the title "architect" without violating the law.

Of course, regardless of the question as to whether the applicant for registration may have been following some of the allied professions, he is still entitled to registration as an architect upon passing the formal examination and meeting the other requirements prescribed by the Act. inasmuch as Section 14 provides "Any person of legal age and of good moral character, upon the payment of a fee of \$10.00, may apply for examination for registration under this Act"; and Section 21 provides, in part, "and said Board shall issue a certificate of registration to every person having passed such examination."

I have not attempted in this opinion to follow seriatim the several questions which you have submitted but I trust that the opinion as a whole will be found to contain a satisfactory answer to all of the questions propounded.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

Note—See opinion herein to Mr. Clarence H. Lightner dated April 14, 1915.

SCHOOL LAW. It is not the duty of the supervisor to assess the one mill tax in any district that has not maintained a school for the preceding year.

January 12, 1916.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing, Michigan:

Dear Sir—Section 4705 of the Compiled Laws of 1897, as amended, provides for the levying of a one mill tax by the supervisor in the various school districts of the township. Such requirement is, however, subject to the condition that the supervisor shall examine the reports of each school district for the preceding year, and if it is shown thereby that the balance on hand in any district equals or exceeds the amount paid for teachers' wages therein during the preceding year, then the one mill tax shall not be assessed. In your letter of the 10th instant you suggest the instance of a district in which no school has been maintained for several years, the children of school age therein being sent by the school board to other schools under the statute relating thereto. The question arises as to whether or not it is the duty of the supervisor to assess the one mill tax in such district.

I am inclined to the opinion that the question as stated should be answered in the negative. The supervisor in determining whether or not the tax is to be spread in a given district must be governed by the reports thereof for the preceding year. If those reports indicate that, as a matter of fact, nothing was expended for teachers' wages, the inference would seem to be unavoidable from the wording of the statute that he is not required to assess the tax. Any interpretation other than this would necessarily lead to the conclusion that a district not maintaining any school and having therein no children of school age might be subject to the imposition of the one mill tax. I do not think that the legislature contemplated that such a result should follow. It follows accordingly in the instance that you have stated that the tax is not required to be assessed.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

LOCAL OPTION LAW. Board of supervisors are not authorized to hear testimony to determine whether or not there has been a circulation or posting of more than one petition. Must determine this fact from the face of the petition.

January 12, 1916.

Mr. Seth T. Pulver, Owosso, Michigan:

Dear Sir—Some confusion seems to have arisen as to the exact holding of this department with reference to the question of petitions praying for the submission of the local option law so-called to the electors of the county.

Replying to your oral inquiry as to the holding of this department

would say that it is the holding of this department that there cannot be separate petitions circulated and posted in the various precincts and that where petitions filed show upon their face that there has been a separate circulation or posting, that such petitions cannot be counted. On the other hand, it is the holding of this department that if it does not appear from the face of the petitions that they have been separately circulated or posted that the board of supervisors is not authorized to hear testimony or consider affidavits for the purpose of determining the question as to whether there has been more than one petition circulated or posted. In other words, the holding is that the face of the petition must govern and if from such face of such petition it appears that there has been separate circulation or separate posting, then such petitions cannot be counted. The converse of this proposition is also true, viz: That if the fact cannot be determined from the face of the petitions themselves, that there has been separate circulation or separate posting, then the Board cannot receive testimony for the purpose of establishing the question of fact.

Very respectfully,
GRANT FELLOWS,
Attorney General.

F-g-O

BOARD OF SUPERVISORS. May not raise money to establish a county house of correction.

January 12, 1916.

Mr. C. A. Bishop, Prosecuting Attorney, Flint, Michigan:

Dear Sir—I have before me your communication of the 11th instant and note therefrom that the board of supervisors desires if possible to submit to the electors of Genesee County the question of raising money for the purpose of establishing a county workhouse or institution similar to the Detroit House of Correction. You have requested my views as to whether or not an appropriation of money for the purposes indicated would be legal.

The purposes for which the board of supervisors may expend money are expressed in the statutes of the State, and money may not be expended unless authority therefor is found in some legislative enactment. An examination of those statutes that relate to the powers and duties of the board of supervisors seems to indicate that it was the legislative intent that no action might be taken along the line suggested other than the establishment and maintenance of a proper and suitable jail. I do not think that any of the legislative provisions can be construed as authorizing the erection of a county house of correction or in fact any penal institution other than a jail. Such being the case, it follows that the electors of the county may not, by approving a resolution to that effect, confer the requisite power. I am constrained to the opinion accordingly that money may not be raised for the purposes stated.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

ST. CLAIR FLATS. Public Domain Commission has no authority to lease lands not included in the survey of 1899 which were set aside as hunting and fishing grounds.

January 13, 1916.

Hon. A. C. Carton, Secretary, Public Domain Commission, Capitol:

Dear Sir—Your communication of the 27th ult. received as follows:

"In the settlement and occupation of the so-called St. Clair Flats, certain parties in years gone by squatted upon and now claim certain lands *not included* in the survey of the so-called St. Clair Flats, but within the territory below the "private claims" and between the lines five hundred feet in rear of the South Channel and the five hundred foot line in rear of the Middle Channel section. These parties are now applying for leases under the provisions of Act 326, Public Acts of 1913.

I would respectfully ask your opinion as to the authority of the Public Domain Commission to grant such leases.

I enclose herewith copies of the Acts in question and would respectfully call your attention to Sections 4, 13 and 14 of Act No. 175, P. A. 1899 as well as Secs. 11 and 17 of Act 326, P. A. 1913.

Does Sec. 30, Act 326, 1913, take away the power to lease such parcels under Sec. 14, Act 175, 1899?"

As I understand it the lands about which you inquire have never been surveyed and are the interior lands on Harsens Island. The Davis survey which was made under authority of Act 175 of the Public Acts of 1899, included lots or parcels fronting upon the open lake and navigable channels, the portion so surveyed being divided into lots of not more than five hundred feet in depth. As the Island is more than a thousand feet wide it resulted in leaving a considerable area lying between the lots fronting upon the Middle and the South Channels unsurveyed. The purpose of Act 175 of the Public Acts of 1899 was to provide for the sale, disposition and control of the unpatented, swamp and overflowed lands in the delta of the St. Clair River, but it was only contemplated that the surveyed lots should be disposed of. As to the unsurveyed lands, Section 13 of this Act made the following provision:

"All of said swamp and overflowed lands not lying contiguous to any natural navigable channel, not included in the surveys made by the Commissioner of the State Land Office under the previous sections of this Act, shall be and are hereby forever reserved to and for the use of the people of this State as a hunting and fishing resort, which said resort shall be under the care and supervision of the State Game Warden, who shall prescribe rules to be observed by persons making use of the same."

This resulted in the withdrawal of the unsurveyed lands from sale and reserved them for the use of the People of the State of Michigan as a hunting and fishing resort. However, as there were some squatters and settlers on this unsurveyed portion for whom the Legislature wished to make some provision, it was provided by Section 14 of the Act as follows:

"All persons now in occupation or who shall hereafter enter into occupation of any portion of the lands which are by section thirteen of this Act reserved from sale, shall be deemed occupants without right and shall by the Commissioner of the State Land Office be required to remove therefrom: Provided, however, The commissioner may in his discretion lease premises within said lands to persons at present occupying the same at such price as he may deem just in case he shall believe such action will not seriously reduce the value of said premises as a game reserve and if he deems such action for the best interests of the people of the State: Provided, further, That no such lease shall be for a longer period than three years. And in case any occupants of said premises continue to occupy the same and decline to enter into a lease with said commissioner he shall immediately take legal action to remove them therefrom."

I presume some leases were made in pursuance to the above provision. The next Act affecting the proposition is No. 215 of the Public Acts of 1909, entitled: "An Act to provide for the sale, disposition and control of the unpatented, swamp, overflowed lands, lake bottom, made lands and all other unpatented lands in the township of Clay, St. Clair County, Michigan." This Act was intended to supersede Act 175 of 1899. Section 3 of this Act provides as follows:

"Said board of control shall meet on the first Wednesday of October, nineteen hundred nine, and each five years thereafter, and shall, at such meetings, fix the rental value for the ensuing five years of such lands as are owned by the State, or held by the State in trust, at the delta of the St. Clair river, and commonly called the St. Clair flats, as were not set aside as a public park by Act number one hundred seventy-one of the Public Acts of eighteen hundred ninety-nine, entitled 'An Act to set aside submerged and swamp lands in the State of Michigan bordering lakes and bayous thereof, for a public park, defining the limits thereof, and providing for its care and management:' Provided, however, That said board of control may from time to time withdraw from said public park such parcels thereof as in its judgment are more suitable for occupancy than for such public park purposes, but such withdrawals shall be only at the meetings herein provided for said board, and upon such withdrawals the rental values of such parcels so withdrawn shall be fixed by said board."

The Act also provides for the use of the survey made under the Act of 1899 so that no further survey was made, and only the surveyed or platted lands were to be disposed of. Section 17 of the Act provided as follows:

"All of said swamp and submerged lands, lake bottom, made lands, or any other lands not lying contiguous to any natural navigable channel and not included in the surveys made by the Commission of the State Land Office as provided for in act number one hundred seventy-five of the Public Acts of eighteen hundred

ninety-nine, shall be and are hereby forever reserved to and for the use of the People of this State as a hunting and fishing resort."

The provisions of Section 17 have the same effect as those of Section 13 of the Act of 1899. So that this unsurveyed portion of Harsens Island was continued as a public resort or park. Your records will disclose whether the Board of Control withdrew from the said public park any parcels as suitable for occupancy under the proviso of Section 3 of the Act of 1909.

The next Act affecting the question is No. 326 of 1913, entitled: "An Act to provide for the leasing, control and taxation of certain lands owned and controlled by the State, and the improvements thereon; providing penalties for the violation of certain provisions thereof; and repealing act number two hundred fifteen of the Public Acts of nineteen hundred nine, and all other acts or parts of acts inconsistent herewith." This Act was intended to supersede former legislation with reference to the lands of the class described and directly affects the St. Clair flats. Under this Act the Board of Control and its successors the Public Domain Commission, was only given authority to lease the lands. The Act gives full power and directions for the control and leasing but does not provide for any new survey. Section 17 of this Act provides as follows:

"In describing the lands that may be leased under the terms of this Act, said Board of Control shall be governed by maps, plats and field notes of surveys made by the United States surveyors or by the State of Michigan."

Section 11 provides "The Board of Control shall have no power to lease to any person, firm or corporation, lands of the character described in section one of this Act, that are now included by any law of the State within a public park." This section undoubtedly refers to the unsurveyed portions of the Flats which were reserved for hunting and fishing under both of the former Acts. It will be noted that no provision whatever is made in this last Act in favor of persons occupying unsurveyed lands and indeed the power of the Commission to lease such lands is expressly taken away.

After a careful examination of all of these Acts I am of the opinion that the Domain Commission has no longer any authority to lease these unsurveyed lands.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

WORKMEN'S COMPENSATION LAW. The dependents of an employe who dies from pneumonia contracted as a result of a strain or injury received in the course of his employment may recover.

January 13, 1916.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing, Michigan:

Dear Sir—You have recently referred to this Department copy of a communication addressed to you by Professor C. T. Grawn, President of Central Michigan Normal School, Mt. Pleasant, and have requested that I give you my views with reference to the matter therein referred to. It appears that on the 26th of December last fire broke out in the basement of one of the buildings of the institution mentioned. The engineer took a very active part in calling the fire department and preventing the spread of the fire. It is stated that the occurrence led to a severe attack of pneumonia from which the engineer died on the 5th instant. The question is presented as to whether or not the case comes within the provisions of the Workmen's Compensation Law of this State, so that compensation may be paid thereunder to those who may be entitled to receive the same in accordance with the provisions of the statute.

There would seem to be no question but that the engineer is to be regarded as an "employe" as that term is used in the Workmen's Compensation Law. It also seems to follow without question from the statement of facts submitted that the acts performed by such employe, and which resulted in his contracting pneumonia were "in the course of his employment." The right to recover under the law referred to must, therefore, depend upon the answer to the question: Was the proximate cause of death, that is, pneumonia, caused by some injury received by the employe in connection with the fire? If it can be established as a matter of fact that the disease resulted from some strain or injury received by the engineer while performing his duty in the manner indicated, a case within the province of the act would seem to be made out. I am unable to say positively from the facts before me that pneumonia did result in this case because of a strain or other injury received. Such a conclusion may be a fair inference, but its positive determination must, it seems to me, rest on the testimony of physicians.

The case of *Bayne v. Riverside Storage Co.*, 181 Mich. 378, may be referred to as indicating the rule of law that must necessarily be applied in determining whether or not payment should be made out of the state Accident Fund in the instant case. There the claimant's decedent died from the effects of pneumonia. It was claimed, and evidence introduced to support the claim, that he had received a strain while performing duties in the course of his employment. It was apparently the view of the court that if the disease was caused in the manner contended recovery might be had under the Workmen's Compensation Law. In fact, such proposition seems to have been admitted by council for the employer. A board of arbitration and subsequently the Industrial Accident Board on appeal had determined the question of fact in favor of

claimant, and the Supreme Court refused to disturb such finding. As indicated hereinbefore, I am impressed that the same issue of fact that was controlling in this case must likewise be regarded as of prime importance in the instant case; and that if the employe referred to in Mr. Grawn's letter contracted pneumonia as a direct result of some strain or injury received by him while performing duties in the course of his employment, dying from the effects of the same, recovery may be had under the provisions of the Workmen's Compensation Law.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

JUDICATURE ACT. Section 58 of Chapter II does not supersede Act 213 of 1915 in any respect. Circuit judges assigned to duty in accordance with the latter measure are entitled to draw pay accordingly.

January 14, 1916.

Hon. O. B. Fuller, Auditor General, Lansing, Michigan:

Mr Dear Mr. Fuller—I have before me your letter of the 13th instant in which you call my attention to Act 213 of 1915, and also to section 58 of Chapter II of the Judicature Act. The former measure is the so-called "Presiding Circuit Judge Act" and is entitled: "An Act to provide for a presiding circuit judge and for the manner of his selection, to prescribe his powers and duties, and to defray the expenses incident thereto." Presumably in accordance with the incidental purpose suggested in the last clause to the title, section 3 provides:

"That whenever a judge of any circuit shall hold court in any other circuit he shall be paid by the state the same salary for the time he serves that is paid to the judge of the circuit to which he is called, and the necessary expenses of the presiding circuit judge shall be paid in the same manner."

The section of the Judicature Act above cited provides for an annual salary for each circuit judge to be paid out of the general fund in the State Treasury. It is specifically declared in such section that this salary shall be "in full for all services performed by each of said judges in this State, unless the board of supervisors shall have, or at any regular session hereafter shall vote additional salary to the circuit judge." You state that in accordance with Act 213 several circuit judges have been designated by the presiding judge to serve in other circuits in which, through action by local boards of supervisors the compensation of the local judge or judges has been increased. It is anticipated, therefore, that vouchers for such additional salary will be presented to your Department in the near future in accordance with the provision of Act 213 above quoted. You have asked that I give to you my view as to the interpretation of the clause of the Judicature Act in question and also as to its effect on Act 213 of 1915.

In an opinion given you some days ago in which Act 303 was involved

together with a certain provision of the Judicature Act certain fundamental principles and rules of construction were suggested that must be applied in cases of this character. It was there indicated that legislative measures that are in *pari materia* must be construed together, and also that two enactments passed at the same session of the legislature, with reference to the same subject matter, will both presume to be valid. I am impressed that these fundamental principles must likewise control in the instant matter. In cases of clear repugnancy between the particular statutory provisions here involved, the Judicature Act being subsequent in its passage, must, of course, be regarded as controlling; but it does not occur to me that repugnancy must necessarily be said to obtain. It will be noted that section 58 of Chapter II of the Judicature Act qualifies the declaration that the annual salary fixed shall be in full for all services rendered by stating an exception. When the board of supervisors in any county has taken action, or hereafter takes action, granting additional compensation to the judge of the circuit, the declaration of the section is not applicable. I am impressed from a consideration of this provision of the Judicature Act, made with reference to other legislative enactments along the same line and especially with reference to Act 213, that the clause with reference to salary must be interpreted as meaning that a circuit judge who performs services in any circuit in which the compensation has been increased by action of the board of supervisors is not to be regarded as subject to the limitation. I do not think that we may properly regard the excepting clause included therein as applicable only when the additional compensation is paid by the county. Had it been the intention of the legislature that the clause should be so taken, I believe that we may assume that such language would have been used as would leave no chance for question on the matter. Viewing the section as actually drafted, however, the more logical inference to be drawn therefrom is, in my judgment, as above indicated. It can, I think, be scarcely presumed that the legislature intended to declare a distinction between judges who might be assigned to a particular circuit in accordance with the laws of the State, and those judges who reside in such circuit. Rather the presumption is that uniformity of operation was intended, that is, that all performing the same services in the same judicial circuit should be treated alike without reference to whether the individual concerned had been elected to the office of circuit judge in such circuit or had been assigned to duty there in accordance with provisions, the enactment of which has been found expedient and necessary.

In accordance with these suggestions, it is my opinion that section 58 of Chapter II of the Judicature Act is not to be regarded as superseding, or as being in any way repugnant to Act 213 of 1915 insofar as the latter measure has reference to the payment of compensation to certain judges in particular instances. The fact that the Judicature Act does not cover the subject matter of Act 213 may in itself be taken as indicating that the legislature regarded both measures as effective and intended the same to operate together. It follows, therefore, that when the vouchers to which you refer are presented, the same should be allowed in accordance with the provisions of the statutes relating thereto.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

GAME AND FISH LAWS. Act 35 P. A. 1891 is applicable to all of Diamond Lake and is not confined to that portion of Diamond Lake in the township of Penn.

January 14, 1916.

Mr. Otis Huff, Prosecuting Attorney, Marcellus, Mich.:

Dear Sir—We are in receipt of yours of the 28th ult. wherein you state:

“Act 35 of the Public Acts of 1891 provides among other things that it shall not be lawful to spear fish in Diamond Lake, Penn Township in the County of Cass. As a matter of fact Diamond Lake is in four townships, viz.: Penn, Calvin, Jefferson and La Grange. In your opinion would it be lawful to spear fish in any part of Diamond Lake except that part of same which is in Penn township.”

In reply, section 1 of the act above referred to provides as follows:

“That it shall not be lawful for any person to take, catch or kill any fish in the lakes known as Donnell’s Lake and Diamond Lake, in Penn Township, Mud Lake in Calvin township, and Indian Lake, Dewey Lake, Cable Lake, Magician Lake and crooked Lake in Silver Creek township, all in the County of Cass; and Crooked Lake and Round Lake, in the township of Keeler, in Van Buren county; and Brush Lake in the Townships of Berrien and Pipestone, and Long Lake in Berrien township, Berrien county; Lee Lake, in Newton township, county of Calhoun, with spear, net, grab hook, or by the use of jacks or artificial light, of any kind, or any kind of firearms or explosive material, set lines or other device, except the hook and line.”

From an examination of the section above quoted, we are constrained to believe that the act was intended to prohibit the catching or killing of fish in Diamond Lake with spear, net, grab hook or by the use of jacks or artificial light, or any kind of firearms or explosive material, or other device except the hook and line, and that the words “Penn Township” are words of description rather than words used for the purpose of limiting extent of application in the act. For this reason, we are inclined to believe that it would be unlawful to fish in the prohibited way in any portion of Diamond Lake, whether that portion be in Penn Township or any of the other townships in which the said lake may be located.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

BUILDING AND LOAN ASSOCIATIONS. (1) Not authorized to receive deposits excepting in the way of installments upon stocks; (2) In case of insolvency a person loaning money to the association would be preferred over ordinary stockholders.

January 17, 1916.

Hon. Frank W. Merrick, State Banking Commissioner, Lansing, Michigan:

Dear Sir—I have your communication of the 14th inst. as follows:

“I am enclosing herewith letter from one of our State banks, as well as advertisements attached upon the subject matter mentioned in the letter. Will you kindly advise us as to whether or not a building and loan association can legally advertise for deposits; and also advise us, whether or not, in the event of an individual or bank loaning a building and loan association money, would the person or bank become a preferred creditor as against the stockholders of the building and loan association.”

In reply thereto would say that domestic building and loan associations are governed by the provisions of Act 50 of the Public Acts of 1887, as amended by Act 17 of the Public Acts of 1901. The purpose of such associations is stated in section 1 of the above Act as follows:

“Any number of persons * * * desiring to organize a building and loan association for the purpose of building and improving homesteads, removing incumbrances therefrom, and loaning money to the members thereof, may, by complying with all the provisions of this Act and entering into articles of association, become a corporate body. * * * ”

Section 5 provides, in part, as follows:

“The authorized capital stock of such association shall be divided into shares having a par value of not less than twenty-five dollars, nor more than two hundred dollars each, payable in periodical installments, called dues, not exceeding two dollars per month on each share: Provided, That the by-laws may provide for the advance payment of installment dues and for which there may be issued an advance payment certificate. The shares may be issued in series, or at any time as the by-laws shall determine, and subscriptions therefor shall be made payable to the association.”

Under the provisions of sections five and six of the Act most building and loan associations in this State make provision for investment in their capital stock on the installment plan. This, however, must be distinguished from receiving deposits as banks do business.

I have examined the advertisement to which you refer and do not think it is open to the objection that the building and loan association

in question is holding itself out to be a bank. I am of the opinion that were they doing so it would constitute a misuse of their charter.

With reference to the second question which you ask as to whether a bank loaning money to a building and loan association would be preferred in case of insolvency over stockholders in the association, I am of the opinion that the same rule would apply as in ordinary corporations. The members of a building and loan association are mutually liable for its obligations and the funds of the association and its assets in case insolvency results, may be used for the payment of debts. In this connection I call your attention to Thornton and Blackledge on building and loan associations, Sections 376 and 377.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

LIQUOR LAW. An applicant to whom a license is refused under Act 169 of 1915 cannot be said to have voluntarily surrendered the same.

January 18, 1916.

Mr. Glen Smith, Prosecuting Attorney, Grayling, Mich.:

Dear Sir—I have before me your letter of the 14th instant in which you request my views upon the following statement and inquiry:

“I would appreciate your opinion as to whether or not a township board in a township where the number of saloons exceeds the ratio of one saloon to five hundred inhabitants according to the last United States census, could legally grant a liquor license to a person who had not heretofore been engaged in the liquor business, in place of a license rejected by the board by virtue of Act 169, P. A. 1915, providing the license so rejected was presented by one who was engaged in that business in April, 1909 and every year subsequent thereto and that the granting of such license would not bring the total number of licenses up to more than the number of saloons doing business in the township in April, 1909.”

I assume from your statement that had the board granted the application of the individual to whom a license was refused under Act 169 of 1915, there would be no question as to the validity of said license or of any other license issued by the board. In other words, the township board was entitled at the time of the action on the matter of approving liquor licenses to permit the issuance of the number actually authorized notwithstanding that such number exceeded the ratio fixed by the Warner-Cramton Law. The sole question presented would, therefore, appear to be whether or not the refusal of the township board to issue the license to a certain applicant who has heretofore held a license, such refusal being based on the act of 1915, cited in your inquiry, might properly be regarded as a “voluntary surrender” of such license. If the refusal is to be given such effect, it is obvious that the number of licenses that might properly be issued was thereby reduced by one under the facts suggested by your question. It does not occur to me, however, that

action taken pursuant to the privilege granted by Act 169 of 1915, can be given such effect. It seems to be a fair inference from the decisions of the Supreme Court upon this matter that one who holds a liquor license, duly making application for a renewal thereof, taking all the steps prescribed by the statute, cannot be said to have voluntarily surrendered the license because the township board rejects the application and issues a license to another applicant. That the township board has the legal right so to do would seem to follow from the case of Ploof v. Bangor Township Board, 168 Mich. 697, 701. See also Rohde v. Wayne Circuit Judge, 168 Mich. 683, 689. In the case last cited, it was said: "Where the number of eligible applications for licenses exceeds the number of licenses to be issued, the license-issuing authority has the right, subject to the above limitations to determine to whom licenses shall be granted. In making this determination, the act does not provide that preference shall be given to those already engaged in the business." I infer that the action of the township board was taken at the time prescribed by the Warner-Cramton Law and therefore that the application in question was refused before Act 169 of 1915 became effective. Quite possibly the township board proceeded on the assumption that it was given immediate effect which was not, however, the case. This phase of the situation does not seem to be involved in your inquiry as I understand it and I conclude accordingly that it has no bearing on the situation as it now exists.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. Under Covert Act a highway must be continuous and a portion lying within the limits of a village may not be improved thereunder.

January 18, 1916.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Michigan :

Dear Sir—I am advised that a situation has arisen in Hillsdale County with reference to the improvement of a certain highway, and that my views upon certain legal questions involved are desired. I note that the particular road in question passes through the Village of Waldron and extends to the State line, a distance less than one mile from the corporation limits of said village. It is desired to improve this particular road in accordance with the provisions of Act 59 of the Public Acts of 1915, the so-called Covert Act.

The first question presented is whether or not that portion of the highway that is within the corporation limits of the Village of Waldron may be improved in accordance with this measure. I am impressed that this question must be answered in the negative under the provisions of the Covert Act itself. Section 2 thereof permits the improvement of "any highway not included within the corporate limits of any city or village." By necessary inference it must be considered that highways within cities and villages are excluded. Consequently, a petition calling for the improvement of a street or highway so situated confers no juris-

diction under this act either upon the county road commissioners or upon the State Highway Commissioner, as the case may be.

This brings us to the question as to whether or not a road passing through a city or village and extending for some distance on both sides of the corporation can be regarded as within the scope of Act 59. It seems to follow from the provisions of section 4 thereof that any particular road, or section of road, that is to be improved must be continuous. It is specifically required that the same shall not be less than two miles in length. If the act be construed as not requiring continuity of the particular highway concerned, an evasion of the express requirement with reference to the length of highways may be thereby rendered possible. To illustrate: under such an interpretation, separate stretches of highway, none of which aggregate two miles in length and which may be situated several miles apart might be made the subject of one petition and one proceeding in order to confer jurisdiction under this act when each separate parcel might not be entitled to the benefits thereof.

In the instant case, therefore, it must necessarily follow in accordance with the conclusions above suggested that such portion of this particular highway as is situated within the limits of the Village of Waldron cannot be considered as within the scope of the Covert Act; and the portions on opposite sides of the village may not be regarded as continuous. Such being the case, the improvement of these separated portions cannot be carried forward under the Covert Act in a single proceeding. Rather there must be a separate petition and a separate proceeding for each stretch of highway and if any continuous portion is less than two miles in length, then such proceeding with reference thereto is not authorized under this measure.

It appears that the Village of Waldron was incorporated in the year 1905 and that the street that is now sought to be improved was at that time a township road. Under the provisions of the general highway law, it is to be so considered at the present time and may be improved accordingly. I call your attention in this respect to section 10 of Chapter II of the general highway law which specifically declares that "all highways in any incorporated village which were established and laid out by the township before the incorporation of such village, and now used as a street or highway, shall be treated the same as other highways in the township and shall share in such improvement fund." It would be competent, therefore, for the township to improve this road through the village under the facts stated, the cost thereof to be met out of the highway improvement fund of the township. I am constrained to the opinion, however, that State reward may not be secured thereon. Section 7 of Chapter V of the general highway law, which chapter relates to the payment of State reward for roads, defines the term "roads" as used therein to mean "the leading public wagon road outside of incorporated villages and cities." This section must undoubtedly be construed as negating the payment of a state reward to roads situated within the corporate limits of cities and villages. At the last session of the legislature, section 18 of Chapter IV, relative to the county road system, was so altered as to permit the taking over as a county road any street or highway within a municipality. By necessary inference, it seems to follow from the provisions of the amended section that when

such street or highway is thus taken over and is improved by the county road commissioners, the State reward thereon may be received by the county. To this extent, I am impressed that section 7 of Chapter V must be deemed to be modified by the amendment of 1915, but I do not believe that we would be justified in attempting to enlarge the scope of such amendment, nor is it applicable in any instance except as expressly stated. In other words, the State reward may be earned on highways improved within corporate limits only when the same have been taken over by the county road commissioners of the county as a part of the county road system and have been improved accordingly. Had the legislature intended that a township might earn the reward on a highway situated within the village, or that a municipality itself might profit by the provisions of the general highway law relating to the payment of state reward, we must assume that such provision would have been specifically made. We cannot give to an act purporting to amend the so-called county road law a broader scope than was obviously intended. While the township undoubtedly has the power to improve this highway through the Village of Waldron, it may not under the provisions of the general highway law applicable to such improvement, claim the State reward therefor.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

PRIMARY ELECTION LAW. Ballots to be used at the presidential primary must be on same color paper.

January 18, 1916.

Hon. Coleman C. Vaughan, Secretary of State, Lansing, Michigan:

Dear Sir—Your communication of the 14th instant, enclosing draft of ballot to be used under Act 9 of the First Extra Session of 1912, as amended, the so-called Presidential Preference Primary Act, is at hand. In accordance with your request I have examined the same and believe that it conforms fully with the apparent requirements of the statute, and also to such provisions of the general primary election law as are incorporated in said act by reference.

Section 5 of the measure directs that the color, size and form of the ballot used thereunder shall be in accordance with the primary election law. At the time when Act 9 of 1912 became operative, the provisions of the primary law required separate party ballots and prescribed the color of each. By the amending Act of 1913, a general blanket ballot was substituted for the individual party ballots and the provisions with reference to color were stricken out; and the legislature of 1915, although restoring the separate party ballot feature of the law did not see fit to incorporate in the amended act any provision whatever with reference to the color of the ballots that should be used by the voters of the different parties. The conclusion would seem to be unavoidable that it was the intention that all ballots used should be of the same color; otherwise, it is presumable that specific requirements along this line would have been made. We must, of course, construe the various statutory provi-

sions involved as we find them and consequently may not read into the same any requirement not warranted by the language used. It occurs to me that the reference in the Presidential Preference Primary Act to the requirements of the general primary election law as to color, size, form, etc., of the ballot must be construed as meaning that the requirements of the latter measure should be observed as the same may exist at the time of the preparation of such ballots. Clearly, it was the intent that these measures should be construed together and that uniformity should prevail. Such a result can, of course, be secured only by construing the presidential preference primary act in accordance with the general primary election law as each may from time to time be amended. It is accordingly my opinion that the ballots to be used by the various political parties should be printed on paper of the same color.

I am returning herewith the draft of ballot submitted by you.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

LOCAL OPTION. Authorities bearing on question as to whether or not local option petitions may be considered at a session of the board of supervisors begun before the filing of the petitions.

January 18, 1916.

Mr. E. R. Chapin, Prosecuting Attorney, West Branch, Mich.:

Dear Sir—I note from your letter of the 15th instant that a proceeding has been instituted in the Circuit Court of your county to prevent the submission of the question of adopting the local option law at the spring election. It appears from this letter and from your previous correspondence with this Department that the board of supervisors duly met in session on the 11th of October last. On the 21st of October local option petitions were filed with the county clerk and were presented to the board the following day. On the 23rd, the board adopted resolutions declaring such petitions to be sufficient and also ordering that the question be submitted to the electors. The proceeding is based on the theory that action might not be taken thereon at the October meeting inasmuch as the session of the board had begun before the same were filed with the clerk. Section 5 of the local option law requires the clerk to submit the petitions to the board of supervisors “at the next regular or adjourned meeting.” The relator in the proceeding mentioned by you apparently construes this language as forbidding the submission at a current session.

You have asked that this Department furnish you with any decisions that may be of assistance to you at the hearing which will be held on the 24th instant. Permit me to say in this connection that when our previous letter to you was written on the 5th instant, we did not understand that any proceeding was pending or contemplated. Our suggestions were made in accordance with that understanding. In response to your present question, I shall call your attention to certain decisions, some of which tend to uphold the validity of the action that the board

of supervisors has taken, while others seem to be predicated on contrary principles. I challenge your attention also to an opinion given by Former Attorney General Wykes under date of October 24th, 1912, which appears on page 147 of the annual Report of the Attorney General for the year 1913. It is quite possible that reference will be made to this opinion at the hearing.

Gray v. McLendon (Ga.) 67 S. E. 859, and
Gallup v. Schmidt, 154 Ind. 196.

may be cited as supporting the proposition that the board of supervisors was entitled to consider the petitions and pass thereon at the October session notwithstanding that such petitions were not filed until after the session had begun. The first case arose under a statute of the State of Georgia, which empowered the Governor to suspend certain officers and to report the fact of suspension to the "next general assembly." Thereupon if a majority of each branch of the assembly declared that the officer should be removed, the office should thereupon be deemed vacant. Pursuant to this statute the governor proceeded to remove relator in the case, reporting the fact thereof to the assembly which was then in session. It was contended that the use of the word "next" in the act forbade the assembly that was then in session from taking action. The court, however, held otherwise declaring that the word should be construed to mean "nearest in point of time after the suspension and if a general assembly was then in session, it would mean that one." It was further declared that there was nothing in the act forbidding the governor to suspend while the general assembly was in session. It would seem that the same argument may be advanced in the case that you have stated. The court was evidently influenced by the fact that a period of two years must elapse if a contrary construction were adopted and considered that the policy of the law, which was to provide an expeditious way of removing certain officials would be defeated. In the Indiana case, above cited, a statute of the State made it the duty of an executor to pay the taxes upon the property of the estate. It was further provided that in case of neglect to make such payment, the county treasurer should begin an action in the proper court of the county "at the next term thereafter" for the recovery thereof. It appears that the treasurer, instead of waiting until the subsequent term of court, filed his petition in the term of court that was running when the right of action accrued. The court seemed to take the view that the words of the statute might be deemed applicable to the subsequent term rather than the current term of the court, but declined to hold that the required was mandatory. It was said in part:

"But why should the statute be held mandatory in respect to the bringing of the action at the next term thereafter? Is there any apparent reason behind it that warrants such a restriction upon the power of the treasurer? The evident purpose of the statute is to aid in the collection of public revenue and must be liberally construed. It is directed against the fiduciary who refuses to perform a positive duty and who is entitled to no indulgence under any known principle of the law."

The court also pointed out that there was no provision of the statute forbidding proceedings at a current term and invoked the general rule that such a statutory requirement concerning the duties of public officials is to be regarded as directory unless the language of the statute indicated a contrary intent.

In *State v. Asbell*, (Kas.) 46 Pac. 770.

the defendant was prosecuted for homicide and was tried at the February term of court, 1896. The preliminary examination in the case was held after such term had begun. The statute provided when a respondent should be committed witnesses should be bound over to appear and testify at the "next term of the court." It was accordingly urged that the offense was not triable at the February term. The Supreme Court of Kansas declared that in the absence of any other statutory provisions on the subject, there would be much force in the contention, but decided that such other provisions should be taken into consideration and that the expression "next term" as used in the statute should be construed to mean the "nearest term" at which the cause might be tried.

There are a number of decisions that seem to support the theory that the relator is apparently relying on in the present case. Thus in

Sheldurn v. Eldredge, 10 Vt. 123,

the statute involved provided for an appeal to the county court from the decision of Road Commissioners in certain cases. Upon the filing of a copy of the proceedings with the clerk of the county, a committee of revision was required to be appointed "at the first term after such copy shall be lodged with the clerk." In the case cited the copy was filed during a session of the county court, but the appointment was not made until the subsequent term. It was urged that the statute was not complied with, but the court held otherwise, suggesting that it was at least doubtful whether the committee could have been appointed at the current term. Likewise in

French v. Varnard, 63 Mass. 403,

the statute made provision for the removal of cases to the Supreme Court requiring that the action should be entered at the term of such court held next after such removal. In the case cited, the cause was removed on the first day of the March term and was brought on for hearing at the same term. The court held that it had no jurisdiction. In

People v. Lippincott, 64 Ill. 256,

a provision of the constitution requiring appropriations to be made until the expiration of the first fiscal quarter "after the adjournment of the next regular session" was under consideration. Two possible constructions were suggested: that appropriations ended with the first fiscal quarter after the adjournment of the last regular session of the assembly, and second, that such appropriations did not end until the first

fiscal quarter after the adjournment of the next regular session. It was held that the second construction must obtain.. In other words, the expression "next regular session" meant a subsequent session of the assembly. The court placed considerable stress upon the fact that the financial affairs of the State would be in a peculiar condition if the first construction suggested were adopted.

In several cases statutes have been involved prescribing the time of trial of criminal cases. An illustration of such line of decisions is found in

State v. Breaw, (Ore.) 78 Pac. 896.

There the defendant sought to have the indictment dismissed under a provision of the statute granting trial "at the next term of the court." Defendant's theory was that he was entitled to be tried at the same term of court at which the indictment had been found, but the Supreme Court held otherwise, declaring that by the words "next term" the legislature had excluded the current term from the computation. It will be noted that in this case, the court did not hold that a trial at the current term would have been illegal or unauthorized, but rather that the indictment should not be dismissed and the accused set at liberty under the circumstances suggested. In

Heywood v. State (Ga.) 54 S. W. 187,

it was, however, expressly held that under a statute providing that an accused, who did not waive trial by jury should be tried "at the next term" and trial by jury at the current term was unauthorized. A comparison of this decision with that in Gray v. McLendon, supra, tends to suggest that in criminal cases, the courts are inclined to be more technical in the construction of language of this nature than in civil proceedings, and that in each particular case the court will apply the rule that the intention of the law-making body is to be ascertained and carried out, rather than that any rigid definition shall necessarily be applied.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

LIQUOR LAW. Liquor may not be served from a saloon in any adjoining room not covered by the description of the place as set forth in the application and bond. All parts of the building where liquor may be and is served becomes part of the saloon and must remain closed during prohibited hours.

January 18, 1916.

Hon. Arthur D. Wood, Judge of Probate, Munising, Mich.:

Dear Sir—In compliance with the request of the prosecuting attorney of Alger County, we are making further answer to yours of the 5th instant wherein you request the opinion of this office as to the manner of operating a saloon and restaurant which property is now being pro-

bated in your county. From your communication, it appears, "the saloon and restaurant are in the same building, but in separate rooms with individual store fronts, front and rear entrances with a door connecting and except as to the ownership are operated with different help and as separate places of business. The administrator desires to know whether or not in your opinion, he would violate the liquor law if customers in the restaurant would order liquor served them by the restaurant waiters and at the time of ordering the liquor pay the waiter for the same with the request that he secure same and serve it to said customers? The waiter taking the order and money into the saloon securing the liquor and paying the bar tender for same and then serving same to the parties who ordered it."

In reply, a great deal depends upon the exact form of the application and bond relating to this particular place where the business of selling liquor at retail is carried on, as for example, if the application and bond is to do business at a particular designated place, especially if that place is numbered, the business could not be carried on in an adjoining place not covered by the particular number. If in the instant matter, the two places, while actually in the same building, have separate store fronts and different numbers, liquor from the saloon could not be legally sold in the restaurant because the act of selling in the manner mentioned by you would extend the limits of the saloon to a place other than that mentioned in the application and bond. This further thought occurs in this connection. If liquor is served in the manner as suggested in the restaurant then, in my judgment, the restaurant becomes part of the saloon proper and it would be necessary to close the restaurant during the prohibited hours of operating said saloon. In other words, if the restaurant because of its location becomes part of the saloon through the sale or furnishing of liquor therein, then such restaurant must be closed at all times when the said bar room proper is closed.

Trusting this is a sufficient answer to the inquiry submitted, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-v-O

MICHIGAN RAILROAD COMMISSION. Method of heating coaches within the control of the Michigan Railroad Commission.

January 18, 1916.

Michigan Railroad Commission, Lansing, Michigan:
Attention Mr. Cunningham.

Gentlemen—I am in receipt of yours enclosing communication received from J. E. Osmer, Superintendent of Motive Power of the Ann Arbor Railroad Co. Mr. Osmer states:

"We wish to provide some means of heating the engine room of our gasoline motor cars and I respectfully ask if you know of any law which would prevent us from putting a coal stove in a coach."

In reply, this matter is governed by Act 118 of the Public Acts of 1887, which provides:

"Section 1. That on and after the first day of November, eighteen hundred and eighty-nine, every railroad company owning or operating any railroad wholly or partly within this State, shall make some effective provision against the burning of cars in which passengers are carried, or of cars which form part of passenger trains, in some one or more of the following, or other equally effective, methods: By generating the heat for warming the cars outside and independent of said cars, or by the use of heaters in the cars, so constructed that in case of accident, it will be practically impossible for the fire to escape from the stove or heater so as to set fire to cars, or provided with some automatic or quickly and easily operated provision for extinguishing fire, and when the heat is generated outside of the cars, heaters constructed as provided for in this section may be retained within for the use in case of emergencies: Provided, That the provisions of this section shall not apply to caboose cars on freight trains.

Sec. 2. No device shall be adopted for general use until approved by the commissioner of railroads (railroad commission), and he shall have the power, and it is hereby made his duty to order any stoves or heaters removed, which, in his judgment, are unsafe in case of accident. And he is hereby empowered to use such reasonable means to provide for carrying out the spirit of this law to promote the safety of passengers and employes in railway cars, as the condition of the road and experience in the use of the various methods of heating have demonstrated to be practicable and necessary.

Sec. 3. The provisions of this act may be enforced by any circuit court of this state in any county through which the railroad of any company refusing to comply with such provisions may run, upon the application of the commissioner of railroads (railroad commissioner), under such penalty as the said court may determine, of not less than one hundred dollars for each violation of the provisions of this act."

You will note from the above that heaters may be used in passenger cars if so constructed that it will be practically impossible for the fire to escape from the stove or heater so as to set fire to the cars. The entire matter is within the control of the commission, and in my judgment it will be within the power of the commission to permit the use of stoves if the same are safeguarded in a manner that affords the protection contemplated by the statute and if the same are satisfactory in all respects to your commission.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

DRAINS. Section 2 of Chapter 15 of Act 283 of P. A. 1909 as amended by Act 75, P. A. 1915 requiring the construction of a bridge or culvert of a permanent nature and of sufficient strength to safely carry a 15-ton moving load applies only in case it becomes necessary to construct a new bridge or culvert by reason of a drain across a highway.

January 21, 1916.

Mr. Emerson R. Boyles, Prosecuting Attorney, Charlotte, Mich.:

Dear Sir—We are in receipt of yours of the 17th instant wherein you state:

“A drain is about to be constructed across a highway and there is now at this point a bridge of steel-girder construction solid and in good repair. It must be conceded that it is not of a permanent nature, resting upon dirt sills instead of cement or stone abutments and having a plank flooring. The township officers (town board and highway commissioner) want to waive the statute, or their right to a more permanent structure, consider the present bridge a sufficient compliance, assume the burden of the future, bind their successors, and are willing to enter into such agreement. Will such agreement bind the township; will it release the drain from liability for failing to comply with the statute?”

The matter of constructing bridges and culverts where a drain crosses a highway is governed by section 2 of Chapter 15 of Act 283 of the Public Acts of 1909, as amended, by Act 75 of the Public Acts of 1915. Said section provides in part as follows:

“When any drain crosses a highway, the necessary bridge or culvert shall be constructed on the center line of the highway as located by survey and in accordance with plans and specifications which shall be approved by the county, township or district highway commissioner having jurisdiction, and such bridge or culvert shall be of a permanent nature and of sufficient strength to safely carry a fifteen-ton moving load. * * *”

In view of the above quotation, you request our opinion with reference to the facts as set forth in your communication.

In reply we are of the opinion that the statutory provision above set forth applies only where a drain is to be constructed across a highway at a point where no bridge is in existence. In other words, it is the intention of the statute to prescribe the kind of bridge or culvert that shall be constructed in case it becomes necessary by reason of the construction of the drain to cross a highway to construct a bridge or culvert new. In our opinion, the statute would not apply to a situation such as is disclosed from the facts set forth in your communication, and consequently, it would not become necessary to tear out the bridge now in existence and construct such a one as is contemplated by section 2.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-v-O

VETERINARY LAW. A practitioner may maintain more than one office and duplicate certificates of registration may be issued to him. One entitled to registration before the 24th of August may enforce such right thereafter.

January 21, 1916.

Mr. J. E. Ward, President, Michigan State Veterinary Board, Grand Rapids, Michigan:

Dear Sir—I have before me your letter of recent date in which you submit several questions involving the construction of Act 244 of the Public Acts of 1907, as amended. Your first inquiry has reference to the right of a duly licensed practitioner to maintain more than one office in this State. My attention is challenged to no provision of the statute in question that in my opinion can be so construed as to forbid such action. In the absence of a prohibition of this nature, either expressly stated or necessarily implied, it is my opinion that a practitioner of veterinary surgery and medicine may maintain more than one distinct office.

It is implied by the statute that the certificate of registration that is issued to each practitioner entitled thereto shall be conspicuously displayed in his office. This provision in view of the above answer to your first inquiry would seem to suggest that in case more than one office is maintained a corresponding number of certificates will be needed. While there is no express provision of the statute upon this phase of the matter, I believe that your board would be acting fully within its rights in issuing duplicates. If a duly licensed practitioner loses his certificate by fire or otherwise the inference would seem to be that a duplicate may be issued to him by your board from its records. Otherwise, one who loses the original certificate would be thereafter prevented from practicing, under that clause, requiring that the certificate be posted in the office. It occurs to me, therefore, that an applicant for a duplicate license who is entitled thereto should have the same issued to him.

This brings us to your next inquiry as to whether or not a practitioner maintaining more than one office may place in each such office a "student" as such term is used in section 9 of the veterinary act. It occurs to me that this question must be answered in the affirmative. Unquestionably, a veterinarian maintaining but one office may have therein working under his direction and instruction several students. If, therefore, he maintains more than one office, the conclusion would seem to follow that he may place students in each.

You also submit an inquiry as to the rights of a student who has matriculated in a recognized college and who has paid his fee previous to the time that Act 45 of 1915 became operative to be registered by your board without taking the examination. I am unable on the facts stated to give you a definite answer on this proposition. I may suggest, however, that if the person to whom your question refers was entitled to have a certificate issued to him prior to the 24th day of August, 1915, and the failure to issue the same was due to an oversight or to some delay on the part of the board, such certificate of registration may, in my judgment, be properly issued on the theory that the applicant possessed a legal right to demand the same and that it was the duty of the board to furnish the same to him. On the other hand, if such ap-

plicant had no legal right to demand the certificate of registration prior to the 24th day of August, he must now take the examination as prescribed by the statute in its amended form. As suggested, however, if he had a legal right to the certificate prior to the time that Act 45 of 1915 became operative, the taking effect of that amendment cannot in my opinion be so construed as to take away such right; and conversely if he had not such right prior to the 24th of August he may only obtain a certificate of registration upon complying with the law in its present form.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

JUVENILE COURT LAW. Witnesses should be paid out of the county treasury on the certificate of the Judge of the Juvenile Court.

January 21, 1916.

Hon. Neil E. Reid, Judge of Probate, Mt. Clemens, Michigan:

Dear Sir—Your letter of the 11th inst. with reference to the payment of witnesses attending trials in Juvenile Courts, is at hand.

Section 3 of Chapter 48 of the Judicature Act provides for the payment of compensation at a prescribed rate to any witness who attends a suit or proceeding in a court of record. It occurs to me that this provision must be regarded as including within it witnesses in proceedings in the Juvenile Court.

Section 5 of the same Chapter relates to the payment of jurors, and directs that the clerk or judge of the Court of Record shall draw his certificate or order on the county treasurer for the amount due to each such jurors. It occurs to me that these provisions of the statute are to be construed in connection with Section 12016 of the Compiled Laws of 1897 in accordance with which the fees of witnesses are to be paid in the same manner as are the fees of jurors in attendance upon Courts of Record. It seems to me, therefore, that the Judge of the Juvenile Court may issue an order or certificate, requesting or directing that the County treasurer pay to the witness the amount to which he may be entitled under the provisions of the statute. In other words, it scarcely seems to me that it is necessary to have the County Clerk issue his certificate or order where the witness to be paid has been in attendance on a proceeding in Juvenile Court. With such Court the County Clerk has, of course, no direct connection and, as suggested, I scarcely think that the provisions of the statute bearing on the matter of paying witnesses can be so construed as to impose upon him any duty in connection therewith. I believe, however, that the form of certificate enclosed by you is entirely correct and proper; but, as suggested, it should be presented by the witness to the County Treasurer rather than to the County Clerk as stated in your letter.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

REQUISITIONS. State of Michigan is not liable for the expenses incurred when the requisition is granted upon the express condition that the State shall not be liable for expenses incurred.

January 21, 1916.

Mr. W. J. Galbraith, Prosecuting Attorney, Calumet, Mich.:

Dear Sir—We are in receipt of yours of the 11th instant enclosing expense accounts of yourself. Mr. Sheridan and James A. Cruse, in re extradition of Harry Zulch, alias Zimmerman, Emily Zulch, Floyd Widdle and Herbert McCaffery, from the State of Wyoming, and also expenses of Phil S. Sheridan in re extradition of Harry H. Weise, alias Wilson, from the State of New Jersey. You have requested that this Department bring said accounts before the State Board of Auditors as a charge against the State of Michigan under authority of section 11991 of the Compiled Laws of 1897. You state—

“I believe that under section 11991 of Miller’s Compiled Laws and the holding in 67 Michigan, 616 Houghton County is entitled to be reimbursed for every item contained in said bill.”

The section referred to provides as follows:

“The Governor of this State may in any case authorized by the constitution and laws of the United States appoint agents to demand of the executive authority of any other state or territory, or from the executive authority of any foreign government any fugitive from justice or any person charged with treason; and the accounts of the agents appointed for that purpose, shall unless otherwise directed by the Governor, be audited by the Auditor General, and paid out of the State Treasury.”

It is apparent from an examination of the section above quoted that in the absence of a contrary direction by the executive, the necessary expenses incurred in the returning of a prisoner to this State for trial are properly chargeable against the State, but it is also apparent that the Governor may direct otherwise. If you will examine or cause to be examined the extradition warrants granted in the instant matters by Governor Ferris, you will find that the same expressly provided that the State was not to be liable for the expenses, consequently, we are of the opinion that the said expense accounts are not properly chargeable against the State of Michigan. You call our attention to the case of Fallensbee v. Supervisors, 67 Mich. 614. In that case, an application was made to the Supreme Court for a mandamus to the board of supervisors of St. Clair County to audit and allow an account in the sum of \$693.80 as compensation for services and disbursements in making service of a requisition in the State of Texas and bringing two fugitives from that State to Port Huron in St. Clair County. The court refused to grant the writ for the reason that a sheriff serving a requisition does not act in his official capacity as sheriff but acts as an agent under the statute and hence the expenses incurred could not be properly charged

against the county. You will note in this case also that the Governor had issued the requisition upon condition that the State was not to be liable for the expenses. The court does not intimate anywhere in that opinion that under the circumstances the account could be properly charged to the State, but the opinion covered only one proposition, namely, that the county could not be charged with the expense account as made. It does not follow, however, from the holding in that case that expense accounts incurred in serving requisitions may not be made a proper charge against the county in the ordinary case, or in the instant matters. You will notice the following language of the court found on page 617 as reported:

"Neither were the services rendered or expenses incurred at the request of St. Clair County or of its legal adviser."

This language was used for the reason that "the prosecution of the alleged criminals and the procuring of the requisition from the Governor to obtain their return and the disposition made of the case after the fugitives were brought back were at the expense of private parties residing out of the State who were creditors of the fugitives and without the knowledge or consent of the prosecuting attorney of the county, or of the respondents." In the instant matters we apprehend from your communication that warrants were issued with your knowledge and consent as prosecuting attorney, and that the necessary proceedings for the return of these persons were taken upon your motion as prosecuting attorney. Under the circumstances, we are of the opinion that the expenses incurred are properly chargeable against the County of Houghton in view of the fact that the Governor granted the requisition upon the express condition that the State was not to be liable for the expenses incurred.

For the reasons stated, I am returning herewith the expense accounts submitted,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

HIGHWAY LAW. Money apportioned among townships and cities of a county not operating under the county road system in accordance with section 34 of Act 302 of 1915 may not be ordered paid into the fund of any good roads district.

January 25, 1916.

Mr. Carl A. Lehman, Prosecuting Attorney, Ann Arbor, Mich.:

Dear Sir—Section 34 of Act 302 of the Public Acts of 1915 provides for the disposition of the moneys collected by the Secretary of State by way of fees paid on motor vehicles. In accordance with said section fifty per cent of the amount collected is to be returned to the treasurer of each county "to be used to maintain the highways by local authorities." It is further declared that "in counties not operating under the county road system, the board of supervisors shall apportion such tax received to the several townships and cities according to the assessed

valuation thereof to be used by such townships and cities for the construction and maintenance of the highways." As I understand the situation, certain good roads districts have been formed in Washtenaw County as provided in Chapter III of the general highway law. You state that you have advised the Commissioners of such districts that it is the duty of the board of supervisors to apportion money received by the county under the automobile tax law among the various townships and cities. I am impressed that under the letter of the statute you are correct in your opinion and that the duty of the board is as suggested. The question then arises as to whether or not it is competent for the supervisors after making the apportionment in accordance with the provision of the statute to order that the moneys apportioned to townships and cities embraced within or constituting a good roads district shall be paid into the highway fund of such district. It does not occur to me that an examination of the statute will warrant such action on the part of the board. In other words, such action, and only such action, as the statute authorizes either expressly or by necessary implication may be taken. There is nothing in the section or act in question that can, in my opinion, be so construed as to indicate an intention on the part of the legislature to invest the board of supervisors with the authority, in such a case as is stated, to do more than apportion the money among the townships and cities entitled thereto. Neither is reference made to any other legislative enactment by which the scope of this measure might be deemed to be enlarged. I am constrained to the opinion accordingly that your inquiry along this line must be answered in the negative.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. Expense incurred by the State under section 27, Chapter 1, as amended by Act 175 of 1915, may be paid out of the State highway fund.

January 25, 1916.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Michigan :

Dear Sir—Your communication of the 24th instant in which you call attention to section 27 of Chapter I of the general highway law of the State and to section 34 of Act 302 of the Public Acts of 1915, the so-called motor vehicle act, is at hand. The amended section of the highway law referred to makes provision for the changing of the location of a crossing or the abolishing thereof and also the separation of grades whenever the Michigan Railroad Commission and the State Highway Commissioner acting jointly shall decide in a proper proceeding that such action is necessary for the safety of the public. It is further declared that the expense of any such alteration, abolition of crossing, or separation of grades shall be divided between the Railroad Company and the State, county, good roads district or township. It is also specified that the State's portion of the cost of any such change as may be made under the provisions of said amended section shall be paid "from any State highway funds not otherwise appropriated." The question arises, in

view of this provision, as to whether or not payment may be made in case liability is imposed upon the State because of a change in a crossing constituting a part of a State road, out of money belonging to the State highway funds that has been collected under and pursuant to said Act 302 of 1915. Section 34 of this measure makes provision for the disposition of the moneys collected thereunder and directs in substance that such portion as goes in the State highway fund shall be applied to the building and improvement of the highways of the State and for such other purposes as the general highway law may provide. Inasmuch as the statutory provision under which the expense suggested is a part of the general highway law, it would seem that the instance in question is clearly within the scope of the provision of section 34 of the motor vehicle law involved in your inquiry. I am inclined to the opinion, therefore, that any expense properly incurred by the State under section 27 of Chapter I of the highway law, as amended by Act 175 of 1915, may be paid out of moneys accruing to the State highway fund under and by virtue of Act 302 of 1915.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

PUBLIC OFFICERS—DEPUTIES. Register of Deeds (1) During the disability of a register he may revoke the appointment of his deputy and appoint a new one; (2) The deputy has no authority to appoint a deputy and does not take the salary of his principal during such disability.

January 28, 1916.

Mr. Clifford A. Bishop, Prosecuting Attorney, Flint, Michigan:

Dear Sir—I have your communication of the 25th inst. in which you state that the register of deeds of your County has recently been stricken with paralysis and thereby incapacitated from performing the duties of his office; that he has a duly appointed deputy who has taken the proper oath of office and whose appointment and oath are on file in the County Clerk's office of your County; that recently notice has been served upon the present deputy that her services are no longer desired. You present the following inquiries:

“First: Can the register of deeds, who is now physically incapacitated from conducting his office, revoke the appointment of his deputy register previously made while he, the said register, was in full control of the office?

Second: If not, does the deputy register of deeds draw the salary of the register of deeds while serving in the capacity of acting register; also does she have the sole right to make any and all appointments as to clerkships in the office during the time that she is so serving?”

In reply thereto would say that the answer to your questions depends upon the construction of sections 2612, 2613 and 2614 of the Compiled Laws of 1897 which provide as follows:

"The register of deeds shall appoint a deputy, to hold his office during the pleasure of the register; such appointment and the revocation thereof to be in writing, and filed in the office of the county clerk; and before such deputy shall enter upon the duties of his office, he shall take the oath prescribed by the twelfth article of the constitution, and for the faithful performance of his duties by such deputy, the register and his sureties shall be responsible."

"Sec. 2613. In case of a vacancy in the office of the register of deeds, or his absence, or inability to perform the duties of his office, such deputy shall perform the duties of register during the continuance of such vacancy or disability."

"Sec. 2614. If, during a vacancy in the office of the register of deeds, or his absence or inability to perform the duties of his office, there shall be no deputy register, or if such deputy be unable from any cause to perform the said duties, the judge of probate of the county may, by writing under his hand, appoint some suitable person to perform the duties of register of deeds for the time being, who shall take an oath of office, and give such bond as the said judge shall direct and approve."

It will be noted that section 2612 provides that the register of deeds shall appoint a deputy to hold his office *during the pleasure* of the register and that such appointment and the revocation thereof are to be in writing, and filed in the office of the county clerk. You do not state in your letter whether the present register of deeds has revoked the appointment of the present deputy nor that such revocation has been filed as required. I assume, however, that such is the case or would be the case; and you do not state whether or not the register of deeds has been mentally as well as physically incapacitated by his illness.

I do not find that the supreme court of this State has passed upon a question of this nature. However it is fundamental that when a man assumes an office which is created by statute with prescribed powers, duties and immunities and for a definite term, he can not be ousted from such office nor from the powers possessed by him excepting by the methods prescribed by law.

Section 2613, above quoted, provides for the continuance of the performance of the duties of the register in case of a vacancy or of the absence or inability on the part of the register to perform his duties. The evident purpose of this provision is to avoid the possibility of a failure to have the duties of the office performed. Thus in case of an absolute vacancy the deputy would practically become the register of deeds and under the weight of authority would be entitled to the emoluments of the office. 35 L. R. A. 234. In case the register is absent the deputy is authorized to keep the office open and to perform the duties of the register. Absence from the office, however, would not imply that the deputy would become the register of deeds during such absence. The same is true as to inability on the part of the register to perform his duties, as in the case of sickness or mental incompetency.

A distinction must be drawn between a vacancy in the office and mere absence or disability. In the latter cases the register still possesses all the authority that he has while actually in the office, but the actual duties must be performed by the deputy. There can not be but one register of

deeds in the same county at the same time and under this statute there can not be but one deputy. Excepting in the case of a vacancy, where a different rule necessarily applies, the law recognizes that there are certain duties which necessarily must be performed within the register's office, and that there are certain duties which may be performed by the register elsewhere. For instance, the filing of instruments and the recording of the same can only be performed within the office, but the appointment of a deputy need not be so performed and the register might make such appointment from his home. There is nothing in the act of appointing a deputy which necessarily requires the actual presence of the register himself within his office.

Bearing this fact in mind, the question, therefore, is whether section 2613 is intended to take away from the register of deeds the power of revoking the appointment of his deputy during the absence or the inability of the register, notwithstanding that such deputy, under section 2612, holds only during the pleasure of the register. It is true that section 2613 provides that "such deputy shall perform the duties of register during the continuance of such vacancy or disability;" but the use of the words "such deputy" evidently refers to the provisions made in section 2612 as to the appointment of a deputy and does not, in my opinion, place a limitation upon the right of the register of deeds either as to the appointment or revocation of appointment given him by the preceding section. In other words, it is the intention of the two sections that the register of deeds shall always have the power of appointing and revoking the appointment of a deputy; that he may exercise such authority according to his own pleasure, and that whenever an appointment is made of a new deputy such deputy shall perform the duties of register during the continuance of a vacancy in the office or disability on the part of the principal.

This continuing authority on the part of the register of deeds to appoint a deputy and to revoke the same and to make a new appointment at his pleasure is limited only in my judgment by the physical or mental incompetency on the part of the register to perform the physical act by which an appointment or a revocation is made. If he is mentally incompetent, it would necessarily follow that his acts would be invalid to the same extent as his contracts would be. It might also be possible that, while not mentally incompetent, a register of deeds might be in such actual physical condition that he could not perform the necessary act of revoking a present appointment and making a new one in the manner required by law. This would be an extreme case.

In connection with this subject your attention is called to section 586 of Throop on Public Officers, where the following rule is laid down:

"Where a statutory provision declares that a deputy shall be clothed with the powers, and subjected to the duties of the principal, during a vacancy in the latter's office, or in case of the latter's absence or inability; if the principal office becomes vacant, the deputy at once becomes the acting officer; his acts are, to all intents and purposes, those of a principal officer, and he is entitled to the salary of the office, while he so continues to act; but in case of the absence or inability of the principal, the powers conferred and the duties imposed upon the deputy are only those, which are necessary for the transaction of the public business

during the principal's temporary disability; and the deputy does not become the acting principal officer, but he acts only as deputy."

Your attention is also called to the case of *People vs. Hopkins*, 55 N. Y. 74, where the subject is discussed at some length. A review of this case is found in 35 L. R. A. 234. I quote, however, from page 79 of the original opinion as follows:

"It may also be said that the deputy would, upon this construction, become the acting superintendent, authorized to appoint a deputy when there was no vacancy in the office, but a temporary absence or inability to perform its duties, as in these contingencies the powers and duties of the office devolve upon the deputy. But in these cases there is a superintendent in office, and we have seen that there can be but one at any time, and he has his deputy, and there can be but one at any time; hence it follows that in such cases the deputy does not become acting superintendent, clothed with all the powers and subject to all the duties of the office, but such only as are necessary to enable him to perform such acts as are necessary to be performed in his absence or inability to act, the superintendent being at the same time at liberty to perform all such duties as may be performed away from the office; or, in case of inability to act in some particular case, the deputy is to act in that case, while the superintendent acts in all others. * * * * In short, the powers conferred and duties imposed upon the deputy, in case of absence or inability of the principal, are limited to such as are thereby made necessary for the transaction of the business of the department. The powers and duties, not so necessary, still remain vested in the superintendent, and are to be exercised by him."

The reasoning in this case seems conclusive of the questions involved in your inquiry and I am therefore constrained to say that your first question should be answered generally in the affirmative and your second question should be answered generally in the negative.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

P-pi-O

DAIRY AND FOOD COMMISSIONER. May not incur expense for advertising dairy products.

January 29, 1916.

Mr. John B. Mathews, Secretary, Board of State Auditors, Lansing, Michigan:

Dear Sir—On behalf of the Board of Auditors, you have recently requested that I give you my views as to the validity of certain claims against the State which have been presented to the said board for allowance. As I understand the matter, the State Dairy and Food Department has authorized the insertion in newspapers published in the City of Lansing of advertisements of butter produced in Michigan factories.

The purpose of these advertisements was to call the attention of the people to this butter, to the end that the Michigan dairy business might thereby be benefited. The claims presented are for publication of these advertisements, and the point at issue is whether or not they may be properly allowed and paid from the fund appropriated to the use of the Dairy and Food Department.

Act 53 of the Public Acts of 1915 makes provision for a so-called "State brand" for Michigan butter indicating in its title that the general purpose of the act is to insure a higher standard of quality and a more uniform market therefor. Such brand, and the use and regulation thereof, is placed in charge of a commission consisting of the State Dairy and Food Commissioner, the President of the Michigan State Dairyman's Association, and the President of the Michigan State Butter-makers Association. The act does not invest this commission with express authority to insert advertisements in the newspapers of the State, nor to pay for such advertisements. Neither is such authority given to the State Dairy and Food Commissioner. It is, however, specified in section 4 of the act that the rules to be adopted by the said commission shall be published through bulletins issued by the Dairy and Food Department. This provision must in my opinion be construed as forbidding the incurring of expense for publishing such rules in any other way and is, I believe, significant as tending to indicate the purposes for which money may be expended under and by virtue of the provisions of this act. Without discussing in detail other sections of Act 53, I am constrained to say that, in my opinion, none can be so construed as to justify the incurring of this expense, or the making of these particular claims valid charges against the State. Had the legislature deemed it desirable that the information be disseminated to the public through the particular form of advertisements here involved, I believe that we must assume that a provision to that effect would have been incorporated in the act, and that the commission having in charge the State brand, or the State Dairy and Food Commissioner would have been given the express authority to incur expense in this way. We must, of course, construe the act as we find it and may not enlarge its scope by reading into it provisions not warranted by the language that the legislature has employed.

This brings us to the question as to whether or not the bills presented may be said to have been properly incurred under the general act of 1893 defining the powers and duties of the State Dairy and Food Commissioner as such act has been from time to time amended. Certain sections were added to this measure by Act 12 of the Public Acts of 1905, the obvious purpose of which was to protect the public from impure and insanitary milk, cream and butter. It is specifically declared that

"It shall also be the duty of the Dairy and Food Commissioner to foster and encourage the dairy industry of the State."

An examination of the sections added by the act of 1905, as well as of the balance of the act, seems to suggest that the legislature intended that the result sought to be attained should be accomplished by the imposition of penalties upon the producers of milk and cream and the manufacturers of cheese and butter who should place upon the market the product of any dairy establishment not kept in a sanitary and proper manner. To the end that such results might be enforced certain powers of investiga-

tion and inspection were granted to the Dairy and Food Commissioner and to his inspectors. My attention is called to no specific provision of this act, either in the sections added in 1905, or elsewhere, that seems to contemplate the incurring of expense for the dissemination of information to the public through paid advertisements, or the incurring of expense in connection with the advertising of a particular kind of cheese, butter, cream or milk deemed to be of such excellence that the public should be encouraged to purchase the same. I am impressed that the clause above quoted making it the duty of the Dairy and Food Commissioner to foster and encourage the dairy business in this State must be construed in connection with the subsequent provisions of the act, and such provisions must be regarded as pointing out the way that the general purposes suggested could be reached. Again, we are compelled to assume that had the legislature intended to give to the Dairy and Food Commissioner the power to incur expense for any purpose that might, in his judgment, tend to aid the dairy business, provision to that effect would have been made in the act, either expressly or by necessary implication. In my opinion, we may not infer any such intention on the part of the legislature from the bare statement, as to the duty of the Commissioner, especially in view of the fact that that statement is followed by express provisions, the execution of which must naturally tend to the accomplishment of the desired object. I am forced to the conclusion for the reasons suggested that the general statute defining the powers and duties of the Dairy and Food Commissioner can not be regarded as warranting the incurring of expense in connection with the kind of advertisement here involved, and that in consequence the specific claims submitted with your inquiry may not be regarded as proper charges against the State.

I am returning herewith the claims in question.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

FEEBLE MINDED AND EPILEPTIC. An inmate of a State charitable institution is not entitled as such to priority of admission to the Lapeer Home and Training School.

January 29, 1916.

Hon. Woodbridge N. Ferris, Governor, Lansing, Michigan:

Dear Sir—In section 21 of Act 101 of the Public Acts of 1909, which measure relates to the organization and management of the Michigan Home and Training School at Lapeer, it is provided that the Superintendent of any charitable institution in the State may, in case there is a fit subject for said school in his institution, certify such fact to the Probate Court of the county in which such charitable institution may be located. Subsequent provisions relate to the procedure that is to be observed in such case. It appears that quite recently the authorities of the State Public School at Coldwater have taken action under this section in the case of one Ann Tupper, a feeble minded child and that such child has been duly committed to the Lapeer Institution by the probate court of Branch County. Owing to the fact, however, that there are

many applicants now on the waiting list of the Home and Training School, the immediate transfer of this child was found to be impossible. Under these circumstances, the question arises as to whether or not, and to what extent, if at all, the board of control of the Home and Training School may grant priority to those applicants transferred from a State charitable institution in accordance with section 21 of Act 101 of 1909 over patients committed from the various counties and who are not inmates of any State institution. You have asked that this Department give to you its views upon the matter.

Neither the act of 1909 above referred to nor any other statute of this State to which my attention is challenged allows in express terms the authorities of the Michigan Home and Training School to extend priority of admission to inmates of other state institutions as against others who may be duly committed thereto. Section 15 of Act 101 of 1909, as amended by Act 29 of the Public Acts of 1913, contains the following provision :

"Patients shall be entitled to admission in the order in which the copies of the orders for commitment were received and filed and whenever there shall be room at the Home to receive additional patients, the medical superintendent shall at once notify the probate court which made the commitment earliest received and filed as aforesaid, and said court shall within thirty days thereafter cause said patient to be taken to said Home or shall enter an order that such person is no longer entitled to admission and shall notify the medical superintendent thereof: Provided, preference shall be given to the admission of indigent patients so far as circumstances admit."

As a matter of law, it cannot be said, in view of the provisions of the statute, that an inmate of the State Public School at Coldwater, or of any other charitable State institution, that may be committed to the Lapeer home, is entitled to any priority of admission over other applicants that may be on the waiting list. In an opinion heretofore rendered by this Department on the 26th of October last to the Superintendent of the State Public School, a copy of which opinion has been furnished to you, some suggestion along this line was made. This suggestion was, however, based upon the understanding that the board of control of the Michigan Home and Training School as a matter of comity did, in actual practice, accommodate the other State institutions in this respect. I am now advised that this understanding was not correct, and that patients who are committed from other State institutions pursuant to section 21 of Act 101 of 1909 are regarded as standing on no other or different basis than do patients generally who may be committed to the Institution. Doubtless in this position the board of control is observing strictly the letter of the statute and as a matter of law are, of course, acting properly in so doing. I am constrained to advise you, therefore, that under the statutes of this State and the rules of the Michigan Home and Training School adopted pursuant thereto an inmate of the State Public School at Coldwater, or any other charitable State institution, is not entitled to priority of admission to said Institution over others who have been committed thereto by the probate courts of the State. I am advised that the patients at the School are grouped in

cottages together in accordance with the plans of the management, the idea being, as I understand it, to place in the same cottage those who need substantially the same treatment and care. In practice it appears that the order of acceptance of patients is controlled by the character of the cottage in which a vacancy may exist. This, of course, is a priority that is practically a matter of necessity and if I am correctly informed is the only exception that is made. You will note that it is based upon conditions at the institution and not in any degree upon the legal status of any patient who may be on the waiting list.

Trusting that these suggestions will indicate to you my views upon the matter, I am,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

CRIMINAL LAW. A prisoner sentenced to two terms in the State Prison by different courts must be regarded as serving both terms concurrently, the second sentence imposed not being expressed to begin at the expiration of the first.

January 31, 1916.

Hon. James Russell, Warden, State House of Correction and Branch Prison, Marquette, Michigan:

Dear Sir—Your letter of the 25th instant relative to one William Ortman, an inmate of your institution, is at hand. It appears that said Ortman was on the 21st of September, 1915, sentenced to your institution by the Recorder's Court of the City of Detroit for a minimum term of 2½ years and a maximum term of 5 years for the crime of larceny. Subsequently, on the 22nd day of November last said Ortman was sentenced by the Circuit Court of Wayne County for the crime of assault and robbery while armed for a minimum term of 5 years and a maximum of 20 years. He was received at your institution on the 26th of November together with the commitments in each of said cases. The question now arises as to the exact status of this convict, that is, whether he is serving the two sentences concurrently, or if the sentence pronounced by the Circuit Court of Wayne County may be so construed as to begin at the termination of the prior sentence.

I infer from your statements that the judgment entered in each case directed that the term of imprisonment should begin immediately. Doubtless the commitment followed the judgments in substance and in form. Stated somewhat differently it is my understanding that the circuit court of Wayne County in sentencing Ortman for the crime of robbery while armed with a dangerous weapon, did not undertake to provide that the term of imprisonment imposed should not begin until some subsequent date, or until after the previous term of imprisonment had expired. In view of the facts it becomes unnecessary to consider the question as to whether or not the circuit court might have imposed such sentence. Rather the judgments, and commitments, must be construed and enforced as actually made. Such being the case, I am constrained to the opinion that the two sentences must be regarded as run-

ning concurrently, and that in consequence Ortman will be eligible to parole at the expiration of the five-year period specified in the judgment and commitment from the Wayne Circuit Court.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

DRAIN LAW. Where a drain traverses more than one county, a meeting of persons liable to assessment should be held as provided in section 2 of Chapter III of the drain law.

January 31, 1916.

Mr. F. M. Burwash, Prosecuting Attorney, Mt. Pleasant, Mich.:

Dear Sir—I note from your letter of the 29th instant that an application has been made pursuant to Chapter 7 of the general drain law for the construction of a drain traversing portions of Isabella and Mecosta Counties. Some difference of opinion between the drain commissioners of said counties as to the exact procedure to be observed has arisen. The precise point at issue is as to the necessity of calling a meeting at which is to be determined the necessity of the proposed drain and whether or not the same is conducive to public health, convenience and welfare. Such action is required by Chapter III of the drain law as amended by Act 202 of the Public Acts of 1915.

Section 2 of Chapter VII directs that the drain commissioner to whom the application is presented shall notify the other commissioner or commissioners concerned to meet him at a particular time and place, and further requires that such commissioners shall "thereupon and thereafter jointly take all steps and perform all acts and sign all papers as county drain commissioners are required to do singly in the case of other drains including the application to the Probate Court." In case application is made for the construction of a drain located wholly in one county, it is the duty of the drain commissioner, if he finds that such drain is necessary and conducive to the public health, convenience and welfare to make an order to that effect. I am impressed that such an order is likewise necessary in case the drain traverses more than one county and that in such case, it is to be made by the commissioners acting jointly. If they are unable to agree then the State Highway Commissioner may be appealed to as provided by the statute. The purpose of the meeting of those who may be liable to the assessment on the basis of benefits received is apparently to enable the drain commissioner to reach the correct conclusion on the facts of the case. It is obvious that the same reason obtain for the holding of this meeting in case the drain traverses more than one county as in the instance of a drain situated in a single county. Inasmuch as the drain commissioners acting jointly are required to make the order of necessity I believe that the statute should be so construed as to require also the holding of the meeting and the affording of an opportunity to be heard to those whose lands may be crossed or who may be liable to assessment. Pursuant to section 2 of Chapter VII, therefore, read in connection with section 2 of Chapter III, the two drain commissioners concerned in the case pre-

sented by you should jointly give notice of such meeting and cause the notice to be published in the prescribed manner.

Ca-v-O

Respectfully yours,
GRANT FELLOWS,
Attorney General.

GAME AND FISH LAW. Act 236 of 1915 applies only to inland waters of the State.

February 3, 1916.

Edward N. Barnard, Prosecuting Attorney, Grand Rapids, Michigan:

Dear Sir—Your letter of the 31st ult. requesting the views of this Department upon certain matters therein referred to, is at hand. Your first question has reference to the construction to be placed on section 6 of Act 236 of the Public Acts of 1913. Said section limits the number of various kinds of fish, including perch, that may be caught in one day. The point at issue is whether or not the limitation so fixed applies to perch caught in Lake Michigan.

In reply thereto I would say that the Act is expressly limited by its title to the inland waters of the State and the fish taken from such waters. The section in question, therefore, has no reference to the fish caught in Lake Michigan.

With reference to Black Lake or Muskegon Lake I would say that it is the position of the Game and Fish Warden's Department that it is an inland lake. As I understand the situation, the waters thereof flow into Lake Michigan through a well defined and narrow outlet, and consequently it can not be regarded as a part of the lake. It follows therefore that Act 236 of 1915 applies to the waters of Black Lake and the fish taken therefrom.

I am unable to advise you whether or not Thornapple River is navigable, as a matter of fact. Neither am I in position to express any opinion with reference to the ownership of the Island surrounded by the waters of that River, to which you refer. I would suggest that, if there is any question as to whether or not the State claims to own this Island, the matter should be taken up with the Secretary of the Public Domain Commission.

Ca-pi-O

Respectfully yours,
GRANT FELLOWS,
Attorney General.

OPTOMETRISTS. The Board may not reinstate persons whose certificates have been revoked for non-payment of the annual license fee.

February 3, 1916.

Mr. Ernest Eimer, Secretary, State Board of Examiners in Optometry, Muskegon, Michigan:

Dear Sir—I note from your letter of the 31st ult. that your Board, acting pursuant to the provisions of Act No. 71 of the Public Acts of

1909, as amended, revoked, on the 4th of June last, the certificates of registration of some twenty-two registered optometrists of this State for neglect or refusal to pay the annual license fee. I infer from your statement that the required procedure was duly observed, proper notice of the hearing being given as well as notice to the parties concerned that they were delinquent. The question now arises as to whether such persons may be reinstated and new licenses granted thereto without an examination.

The statute in question make no provision for the reinstatement of any optometrist who has permitted his license to be revoked. Such being the case, I am impressed that the Board has no power to take such action and that in consequence the parties to whom you refer stand on the same basis as do individuals that have never possessed a license to practice optometry. Section 8 of the Act, as amended by Act No. 70 of the Public Acts of 1915, declares it to be unlawful for any person who is not registered, or who has not paid the annual license fee, to practice optometry. It occurs to me that the matter should be taken up with the prosecuting attorneys of the counties in which these persons are practicing their profession. If they desire at this time to become registered optometrists there would seem to be no alternative other than for them to take the prescribed examination.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

COUNTY OFFICERS. Should not be interested in contracts with County.

February 3, 1916.

Mr. Edward W. Fehling, Prosecuting Attorney, St. Johns, Michigan:

Dear Sir—Your letter of the 1st inst. with reference to a certain situation that has arisen in your County, is at hand. As I understand the matter the authorities of the County have entered into a contract with a certain physician to attend indigent patients in the City of St. Johns and at the County Poor Farm at a stated amount per month. It further appears that said physician purchases the drugs that he uses and puts in a claim therefor to the County. In other words he buys the drugs and then sells them to the County.

It does not occur to me that this practice is a proper one under the general rule that no county officer or employe should be directly interested in any contract with the County. Rather I am inclined to the opinion that such drugs as may be needed should be purchased directly by the County under proper authority of the Board of Supervisors expressed in an appropriate resolution, and that whoever furnishes such drugs should render a bill therefor directly to the County. For similar reasons it does not occur to me that the Superintendents of the Poor should be interested in any such contract and should not undertake to sell to the County of which he is an officer. It is a fundamental rule of public policy that no public official shall be personally concerned in any contract or agreement with the municipality or political subdivi-

sion of which he is an officer. I believe that the questions you have suggested ought to be answered by reference to this rule. As stated the matter is one that the Board of Supervisors may well take care of by proper resolution.

You do not state whether or not the Board of Supervisors have authorized the employment of the physician. Before attempting to answer your question as to the reports that he may be required to make to said board, I would ask that you advise me on this point. If the Board of Supervisors have not taken action will you indicate by what authority the Superintendents of the Poor have engaged the physician?

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

MICHIGAN RAILROAD COMMISSION. Has authority under Act 259 P. A. 1915 to inquire into the reasonableness of an expenditure to be derived from the sale of securities and to determine whether or not such expenditure will be for the betterment of the corporation and the security holders. Conclusions applied to the case of the application of the Peoples Light and Power Co. of Constantine.

February 4, 1916.

Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—

Attention Mr. Glasgow.

We are in receipt of yours of the 28th instant requesting an interpretation of Act 144 of the Public Acts of 1909, as amended by Act 259 of the Public Acts of 1915, insofar as the same authorizes and empowers the Michigan Railroad Commission to pass upon the issuance of stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof by certain public utility corporations. You ask as to whether in view of the various provisions of the act, your Commission is empowered to inquire as to the probable result of the operation of any corporation, having in mind their ability from earnings of such corporation to pay the interest on bonds, aside from other fixed charges, etc., or whether your Commission is limited by the language of the statute to allow or disallow the issuance of bonds upon the showing made by the petitioner. In reply section 1 of the act in question provides in part as follows:

“Any corporation or association except municipal corporations, organized and existing, or which may hereafter be organized or authorized to do business under the laws of this State, of any lessee or trustee thereof, or any person or persons owning, conducting, managing, operating or controlling any plant or equipment within this State used wholly or in part in the business of transmitting messages by telephone or telegraph, producing or furnishing heat, light, water or mechanical power to the public,

directly or indirectly, and any railroad, interurban railroad or other common carrier may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of facilities or for the improvement or maintenance of service or for the discharge or lawful refunding of obligations: Provided, and not otherwise, That there shall have been secured from the Michigan Railroad Commission an order authorizing such issue and the amount thereof, and stating that in the opinion of the commission the use of the capital or property to be acquired to be secured by the issue of such stock, bonds, notes or other evidences of indebtedness, is reasonably required for the purposes of such person, corporation or association. Any such person, corporation or association desiring authority to issue stocks, bonds, notes or other evidences of indebtedness shall make written application therefor to the said commission in such form as the commission may require. After receiving such application, said commission may, for the purpose of enabling it to determine whether it should grant such authority, make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination. If the applicant shall fail, neglect or refuse to furnish any or all of the information required by said commission, or if the said commission shall so direct, an appraisal of the property of said applicant shall be made a disinterested person or persons to be appointed by said commission, and whose compensation shall be fixed by said commission, the entire expense of making such appraisal to be borne by said applicant. After said appraisal is made and filed with said commission and before any action is taken by said commission upon said application, the expenses of said appraisal as determined by said commission shall be paid by said applicant to said commission, which shall deposit the same in the treasury in the State to be credited to the general fund, taking the receipt of the treasurer therefor and filing the same in its office with said application. If the applicant shall refuse or neglect to pay the expense of said appraisal the commission shall dismiss such application and said commission may bring an action against said applicant in any court of competent jurisdiction in this State for the recovery of the expense of said appraisal. The expense of said appraisal shall be paid by the State Treasurer upon the warrant of the Auditor General to the persons certified by the commission to be entitled thereto. If from the application filed and such other information obtained from the investigation herein authorized, the said commission shall be satisfied that the funds derived from such issue of stocks, bonds or notes are to be applied to lawful purposes and that such issue and amount is essential to the successful carrying out of such purposes, then said commission shall grant authority to make the issue applied for, and in granting such authority, the said

commission may impose as a condition of the grant such reasonable terms and conditions as to the commission may seem proper."

It is apparent from the language above quoted that the primary purpose of the passage of this act was to prevent public service corporations from raising money by the issuance of stocks, bonds, or notes, except when the same was necessary for the improvement of the property or for the lawful refunding of obligations. In other words, the act was designed to prevent a recurrence of abuses practiced in the past in this and other states by the selling of stocks and bonds, the use of none, or practically none, of the proceeds for the betterment of the property which resulted in a cash clean-up upon the part of those selling the watered stock or bonds and in many cases the ultimate surrender of the corporate property to those purchasing the bonds or stock who then realized that the entire property was not worth what had been paid for the said stock or bonds. As before stated, the primary purpose of the act in question was to prevent juggling of this kind and the consequent impairing of the usefulness of the public service companies of the State and it was unquestionably the thought of the legislature that if the property of such companies was burdened by the issuing of obligations in the form of stock, bonds or notes only when the money derived therefrom was to be used for the betterment of the property, then such companies might prosper and be capable of rendering good service to the public. With this end in view a prohibition was placed upon these certain public service corporations against the issuance of stocks, bonds or notes without first having secured the approval of your commission. The act provides the exact procedure whereby such companies may make an application for such permission and for a hearing upon the facts with reference to the same. It provides further that "if the applicants shall fail, neglect or refuse to furnish any or all of the information required by said commission, or if the said commission shall so direct, an appraisal of the property of said applicants shall be made by a disinterested person, or persons, to be appointed by said commission and whose compensation shall be fixed by said commission, the entire expense of such appraisal to be borne by such applicant." It will thus be seen that it was obviously the intention of the legislature that the commission should have the power and authority to thoroughly investigate all of the facts and circumstances underlying the entire matter of such application. While, as before stated, the primary purpose of a hearing on the application and such investigation as may be made by the commission respecting the facts and circumstances upon which the application is founded, is not for the purpose of determining the worth of the securities to be issued from the standpoint of the investing public, nevertheless the reasonableness of the proposed expenditure and the consequent necessity of issuing securities is a proper subject of inquiry and hence the apparent intention of the act is to afford at least some degree of protection to those who may purchase such securities. In other words, it was the legislative intent that the issue of stocks, bonds, notes or other evidences of indebtedness should not be authorized by your commission unless "the use of the capital or property to be acquired to be secured by the issue of such stock, bonds, notes or other evidences of indebtedness is reasonably required for the purposes of such person, corporation or association." The

legislative intent respecting the scope of the act in question and the power and authority of your commission thereunder becomes still more evident when Act 46 of the Public Acts of 1915 is examined. This is an act designed primarily "to prevent fraud in the sale and disposition of stocks, bonds or other securities sold or offered for sale within the State of Michigan * * *." In other words, the primary purpose of this act is the protection of the investing public, thus differing somewhat from the act under consideration. Act 46 is known generally as the "Blue Sky" Act. It prohibits the sale of securities within the State without the approval of the Michigan Securities Commission. It provides for a very complete and thorough examination by the Securities Commission respecting the worth of the securities to be offered for sale, etc. Section 3 exempts from the provisions of the act certain securities, and among them are "securities of public or quasi-public corporations, the issue of which securities are regulated by the Michigan Railroad Commission * * *." As before stated, the primary purpose of this act is the protection of the investing public, and the very fact that the act itself provides an exemption with reference to securities, the issue of which is regulated by your commission, indicates that it was the thought of the legislature that the same purpose was served with reference to such securities of public or quasi-public corporations by your commission.

In order to differentiate between the primary purpose of the so-called Blue Sky Law and Act 259 of the Public Acts of 1915, here under consideration, we make this illustration. A mercantile or manufacturing corporation desires to offer certain securities for sale for the purpose of raising funds to carry on the business of such corporation. The application is made to the Michigan Securities Commission for permission to sell the securities of the company; the commission in considering the application, investigate the entire subject matter, having in mind the interest of those who will purchase such securities; if after investigation, it is believed by the commission that the sale of the same would work a fraud upon the purchasers thereof, it refuses to approve the application. Under the provisions of Act 259 of 1915, a railroad company makes application to the Michigan Railroad Commission for authority to issue bonds in the sum of one million dollars for the purpose of making what it considers necessary improvements in its property devoted to the public use; the property has an appraised value of twenty million dollars. It has an indebtedness of twelve million dollars; its earnings over and above operating expenses have been barely sufficient to pay the interest on its outstanding obligations. If the Railroad Commission were to consider the application from the standpoint, simply, of the investing public, it perhaps would feel compelled to refuse to allow the issuance of further securities, but the property of the company is serving a public need and it is not possible for the company to voluntarily suspend operations. The commission finds from examination that the sum of one million dollars is needed if the company is to continue to render public service. It consequently permits the issuance of the bonds and provides expressly in its order for the disposition of the proceeds from such sale; it may be possible that the railroad company after selling the bonds may never be able to pay any interest on the same. Foreclosure proceedings may be instituted and the property bid in for twelve million dollars in which case those who invested in the last issue of bonds would not only have lost

the interest on the money invested but would also, upon such foreclosure, and sale, lose their investment as well, and the commission may realize the possibility of such result at the time the application is pending before it. Nevertheless, it may have been amply justified in making the order authorizing the sale of the securities; but supposing upon the hearing of the application of the railroad company for the issuance of these securities, it had appeared that the company desired to use the proceeds for the building of a branch line in a certain community, and it appeared to the commission that this branch, for obvious reasons, could not be expected to pay a return over and above the expenses of operation, or other facts had appeared which satisfied the commission that the proposed investment was improvident, then the commission would be justified in saying that such investment was not reasonably required for the purposes of the company and would clearly have the right to refuse its authorization of the issue of further securities.

Applying these conclusions to the case of the Peoples Light and Power Company of Constantine, regarding which you specifically inquire: From the facts set forth in your communication it appears that this "petitioner came before the commission, claiming to be an engineer, giving a detailed statement of the property purchased to create a dam and flowage rights and that he paid \$20,000 therefor. He also filed an itemized statement showing the actual expense of constructing a power house, supplying the wheels, dynamos and other hydro-electric machinery necessary to produce light and power, to have been \$31,500. He asked that against such investment of approximately \$51,000 he be allowed a bond issue of \$45,000, taking his pay for other expenses, labor, superintendence, taxes, interest, etc., in stock.

It would appear from the representations made that due in part, at least, to the fact that the stream which he has dammed is not sufficiently large to furnish power to operate the plant so as to result in net revenue enough to keep up the interest on the bonds."

In our opinion your commission upon this point had, under the provisions of Act 259 of the Public Acts of 1915, authority and power to inquire into all of the necessary facts to determine whether or not the "use of the capital or property to be acquired to be secured by the issue of such stock, bonds * * * is reasonably required for the purpose of such * * * corporation," and if the applicant failed, neglected or refused "to furnish any or all of the information required * * *" your commission had power to require an appraisal of the property of said applicant by a disinterested person or persons to be appointed by the commission at the expense of the applicant, and if it appeared from the examination before the commission, or upon the appraisal made that the stream upon which the applicant was operating was not sufficiently large to furnish power to operate the plant successfully so that a sufficient return might be had to pay interest on the bonds proposed to be issued, then in such case, it was within the authority of your commission to refuse the authorization of such issue for the reasons that the use of the capital to be acquired by the issue of the bonds was not reasonably required for the purpose of the corporation and that the expenditure of money for the proposed purpose was not justified under the facts disclosed.

We do not desire to be understood as holding that under the provi-

sions of this act, the primary purpose of the hearing with reference to such matters before your commission is the protection of the investing public, but simply to the extent that your commission have the power to withhold permission for the sale of securities by public service companies when the funds to be derived from such sale are, in the judgment of the commission, after the full hearing on the facts, to be devoted to a purpose which cannot result beneficially to the interest of the company or the security-holders of the same.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

MICHIGAN RAILROAD COMMISSION. The penalty provided by section 6301 C. L. 1897, against a railroad company for obstructing a public crossing for a greater period of time than five minutes, can not be enforced in the Courts of this State when such road is in the hands of receivers. But proceedings may be instituted before the Federal Court having control and direction of said receivers. .

February 8, 1916.

Michigan Railroad Commission, Lansing, Michigan:
Attention Mr. Cunningham.

Gentlemen—We are in receipt of yours of the 4th inst., File No. 4510 relative to the blocking of street crossings in the city of Greenville by the Pere Marquette Railroad. You have requested our opinion with respect to the subject matter submitted. From the correspondence it appears that the Pere Marquette Railroad Company has permitted trains to obstruct a certain crossing in the City of Greenville for various periods of time ranging from twenty minutes to forty-eight minutes, in violation of the laws of Michigan. The matter was finally referred to the Prosecuting Attorney for the County of Montcalm who took the position that in view of the decision of the Supreme Court of Michigan in the case of *People vs. Blair*, 183 Mich. 130, an action against the said Company under section 6301 of the Compiled Laws of 1897 would not lie. The said Prosecuting Attorney in his communication to Honorable F. E. Ranney uses the following language:

“I would suggest that you enter another complaint to the Michigan State Railroad Commission and call their attention to the fact that the Pere Marquette Railroad Company is in the hands of receivers and that under the decision of the Supreme Court of this State the receivers cannot be prosecuted for the violation of this statute and calling the attention of the Commission to their authority under Section 6234, C. L. of 1897, as amended, and Section 6557 of Howell's Annotated Statutes, second edition.”

In reply we are of the opinion that the Prosecuting Attorney, in view of the decision of the Supreme Court above referred to, is unquestionably correct and we know of no other statutory authority under which this matter may be taken care of. The Prosecuting Attorney refers to Sec-

tion 6234 C. L. of 1897 and Section 6557 of Howell's Annotated Statutes, second edition. Neither of these sections, in our opinion, give your Commission any authority with respect to this subject matter.

The section first referred to treats of the general powers, liabilities and restrictions of corporations organized under the General Railroad Law and the only reference thereto respecting street crossings is found in subdivision 5 where reference is made to the construction of railroads "upon any public street, lane, alley or highway," and providing that the same shall be upon such terms and conditions as shall be agreed upon between the railroad company and the Common Council of the city.

Section 6557, Howell's Annotated Statutes, second edition, confers upon the Commission the power of inspection with respect to equipment, the right to regulate speed, etc., and the power of the Commission by virtue of this section with respect to the movement of trains refers particularly to the running of such trains over defective, dangerous or unfit track, etc. As before stated in neither of these sections is the Commission authorized to deal with the subject matter involved in this complaint.

The Supreme Court of this State, in the case of *People vs. Blair* above referred to, quoted, in part, from the decision of the Supreme Court of the United States in the case of *United States vs. Harris*, 177 U. S. 305. In that case an action was brought to recover a penalty under the Federal Law against the railroad in the hands of a receiver. The case was very much on all fours with the case of *People vs. Blair*, and the Court referring to the Federal Statute used the following language:

"It may well be that Congress, in omitting to expressly include receivers in these sections, intended to leave them subject to the control and protection of the Courts, whose officers they are. It does not, therefore, follow that the statute in question would be without operation, where railroads are in the hands of receivers."

My construction of the language quoted is that section 6301 of the Compiled Laws of 1897 providing that "and any railroad corporation, or company owning or operating a railroad in this State that shall permit its engines, cars or trains to obstruct any public street or highway, for a longer period than five minutes at any one time, shall be liable to a penalty for each offense of twenty-five dollars" is as applicable to the Pere Marquette Railroad as to any other railroad of this State. But it is not possible to sue for and collect the statutory penalty imposed. I think, however, that the entire matter can be taken care of, and should be taken care of, in the form of an application to the United States District Court for the Eastern District of Michigan, that being the Court having control and direction of the receivers of said road.

The files submitted are returned herewith.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O—encls.

BASTARDY. A receipt given by the mother of a bastard child releasing the father from all liability in consideration of the payment of \$25.00 is not a bar to bastardy proceedings instituted by the mother and such receipt is not admissible in evidence for such purpose.

February 8, 1916.

Mr. Herman Dehnke, Prosecuting Attorney, Harrisville, Michigan:

Dear Sir—We are in receipt of yours of the 1st inst. From your communication it appears that a certain individual of your county was arrested and charged with bastardy; that the proceedings were originated in the usual manner by a voluntary complaint by the mother of the bastard child; that subsequent to the arrest defendant presented a receipt a copy of which you enclosed, such receipt reciting that in consideration of \$25.00 defendant is released from all claims held against him for having sexual intercourse with the complainant. You further state that it is the intention of the defendant to offer said receipt in evidence upon the trial as a defense to the said proceeding. You further state that the child in question is apt to become a charge upon the county and that the county has already been compelled to pay the hospital bill incurred at the time of the child's birth. You ask our opinion as to whether such receipt can be made the basis for a proper defense upon the trial of the issue and whether or not the situation would be different if the present proceeding were discontinued and instituted anew by the Superintendents of the Poor as prescribed by statute.

I reply you are advised that in the opinion of this department the receipt in question cannot properly be introduced in the defense of the said action. The purpose of bastardy proceedings is to relieve the county from the possibility of the support of the bastard child. The statutes provides that the proceedings may be instituted by the Superintendents of the Poor, but this statutory provision is no bar to the institution of such proceedings upon the part of the mother of such child, and when instituted by such mother are, as before stated, for the purpose of preventing the possibility of such child becoming a burden upon the public, and it is for this reason that the public and the public authorities should carry on such proceedings. In view of the nature of the proceedings, a payment of any sum, particularly the insignificant sum mentioned, and such settlement being made without the acquiescence or consent of the Superintendents of the Poor of the county, can have no effect upon the question of the right of the county by the prosecution of bastardy proceedings, to compel the support by the father of the said child.

Very respectfully,

GRANT FELLOWS,

Attorney General.

Cr-g-O

MICHIGAN RAILROAD COMMISSION. Section 8 of P. A. of 1913 providing that "in case any telephone company shall desire to sell or lease its lines or facilities, or any part thereof, to any telephone company in this State, such sale or lease shall be lawful only" when permission for the same shall have been secured from the Michigan Railroad Commission, is applicable to any person, co-partnership or corporation doing a telephone business within this State.

February 8, 1916.

Michigan Railroad Commission, Lansing, Michigan:

Attention Mr. Glasgow.

Gentlemen—We are in receipt of yours of the 4th inst. wherein you call our attention to the language used in the several sections of Act 206 of the Public Acts of 1913. You state:

"A party owning a certain telephone property has seen fit to enter into lease relations, also into contract relations for sale and purchase of telephone property claiming that as section 8 does not use the language 'person, copartnership or corporation' but used the language only 'telephone company', that such individual may enter into such lease and contractual relations without the approval of this department."

You request our opinion as to whether the terms of section 8 of the said Act are applicable to an individual as well as a corporation or an association.

In reply, section 1 of the said Act provides, in part:

"All persons, corporations and associations operating lines or or exchanging, doing a telephone business within the State of Michigan, are hereby declared to be common carriers * * *."

From an examination of the various sections of the Act we are of the opinion that the provisions of section 8, whereby telephone companies are required to secure the permission of your Commission before entering into contract relations for the leasing, etc., of its line or other lines, is equally applicable to individuals engaging a a common carrier in the telephone business. In other words, that the words "telephone company" includes any person, copartnership or corporation doing a telephone business and we are, therefore, of the opinion that the individual referred to can make no valid contract for leasing, etc., without first having secured the approval of your Commission.

Respectfully yours,

GRANT FELLOWS,
Attorney General.

Cr-pi-O

MICHIGAN RAILROAD COMMISSION. A foreign railroad corporation is not required to secure the approval of the Michigan Railroad Commission under the provisions of Act 144, P. A. 1909, as amended, previous to securing a certificate of authority to do business as a foreign corporation, from the secretary of state.

February 8, 1916.

Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—Some time ago you referred to this Department certain papers with reference to the application of the Wabash Railway Company filed with the Secretary of State, wherein it is requested that authority be given for said company to do business in the State of Michigan as a foreign corporation under the provisions of Act 206 of the Public Acts of 1901, as amended. You requested our advice as to whether this is a matter that should be presented to your commission for its approval under the provisions of Act 44 of the Public Acts of 1909, as amended by Act 259 of the Public Acts of 1915.

From the files submitted it appears that the Wabash Railway Company is a corporation organized to be business under the laws of the State of Indiana, that said company operates approximately seventy-five miles of main track in the State of Michigan and for this reason desires to be permitted to do business in the State of Michigan as a foreign corporation under the provisions of the act above referred to. It does not appear that the Wabash Railway Company is at this time desirous of issuing bonds, stocks or other evidences of indebtedness. We are, therefore, constrained to advise that no action is necessary upon the part of your commission in advance of a determination by the Secretary of State with respect to the application as filed. If this said company is permitted to do business in the State of Michigan under the foreign corporation law, and after having been so admitted desires to issue any stock, bonds or other evidences of indebtedness, it will then be required to make application to your commission under the provisions of Act 144 of the Public Acts of 1909, as amended, the same as though it were a public utility corporation organized under the laws of this State.

Enclosures submitted are herewith returned.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

BOARD OF SUPERVISORS—POWERS OF. With reference to investigating the matter of interest derived from a deposit of State and County funds. Saginaw County situation discussed.

February 8, 1916.

Mr. Bird J. Vincent, Prosecuting Attorney, Saginaw, Michigan:

Dear Sir—We are in receipt of yours of the 3rd inst. wherein you state:

“At the January, 1916 Session of the Board Supervisors of Saginaw County, a Committee of five members of the Board was appointed for the purpose of investigating the facts with respect to the disposition of interest on the various funds in the hands of County Treasurers of this county, it being alleged that the County Treasurers have placed certain funds in their hands in a depository upon which funds interest was credited to the county, and that they have placed certain other funds in a special fund in the depository, upon which said funds the interest was not credited to the county, it being further alleged that upon the second class above named of funds, the treasurers personally profited by the collection of the interest thereon.

This Committee was also charged with the duty of the Board of Supervisors, of investigating the question of interest on State and County funds held in the hands of township and city treasurers for a longer period of time than provided by statute, that is to say the statute fixes specified dates upon which the state and county collections shall be paid by the township and city treasurers to the County Treasurer. It has been alleged that these funds were not paid in at the dates specified by law, but were retained by certain local treasurers, and said Committee has been instructed to investigate as to the disposition of interest accruing upon said funds during said periods.”

You request the advice of this Department

Firstly,—“As to their legal power and authority with respect to the general scope of their investigation,”

and,

Secondly,—“As to the legal power and authority of said Committee to investigate the question of the payment and disposition of interest upon state and county collections held in the hands of city or township treasurers beyond the period provided by law for the turning over of such collections to the county treasurer, and particularly as to the power and authority of said Committee to examine the books of city and township treasurers for the purpose above set forth.”

In reply, subdivision 16 of Section II of Act 136 of the Public Acts

of 1851, as amended, the same being Section 967 of Howell's Annotated Statutes, Second Edition, provides:

"The said several Boards of Supervisors shall have power and they are hereby authorized at any meeting thereof lawfully held: To represent their respective county, and to have the care and management of the property and business of the county in all cases where no other provision shall be made."

From your communication as well as the information furnished, it appears that it has come to the attention of the Board of Supervisors of your County that various funds in the hands of county treasurers of Saginaw County have, in the past, been deposited in depositories and the interest derived therefrom has been retained by such treasurer and not turned over and credited to the County. It has also come to the attention of the Board that State and County funds have been held by township and city treasurers of your County for a longer period of time than is provided by statute; that such funds have been deposited and the interest from the same has been retained by such treasurer personally. The Board of Supervisors appointed a special committee to investigate this matter and this Committee desires information as to their power in the premises.

It is unquestionably the duty of the Board of Supervisors whenever it believes that property or funds belonging to the county have been unlawfully diverted or retained, to institute proper proceedings for the securing of such funds. And with this end in view it certainly has the power of making such investigation as may be necessary to disclose all facts with reference to the transaction and in our opinion it is entirely proper that this investigation be carried on through a committee of the Board. In order to define the limits of this power it is necessary to consider somewhat the law applicable to the facts set forth.

Section 1 of Act 131 of the Public Acts of 1875, the same being section 1197 of the Compiled Laws of 1897, and Section 891 of Howell's Annotated Statutes, Second Edition, provides:

"That all moneys which shall come into the hands of any officer of the State, or of any officer of any county, or of any township, school district, highway district, city or village, or of any other municipal or public corporation within this State, pursuant to any provision of law authorizing such officer to receive the same, shall be denominated public moneys within the meaning of this Act."

Section 2 of the same Act provides:

"It shall be the duty of every officer charged with the receiving, keeping, or disbursing of public moneys to keep the same separate and apart from his own money, and he shall not commingle the same with his own money, nor with the money of any other person, firm, or corporation."

Section 3 provides:

"No such officer shall, under any pretext, use, nor allow to be used, any such moneys for any purpose other than in accordance with the provisions of law; nor shall he use the same for his own private use, nor loan the same to any person, firm, or corporation without legal authority so to do."

And section 4 provides:

"In all cases where public moneys are authorized to be deposited in any bank, or to be loaned to any individual, firm or corporation, for interest, the interest accruing upon such public moneys shall belong to and constitute a general fund of the state, county, or other public or municipal corporation, as the case may be."

It is apparent from an examination of these sections that the treasurer of any County, township, highway district, city, village or school district shall account for all moneys coming into his hands by virtue of his said office, that all such sums shall be denominated public moneys, and that any interest derived from a deposit of the same shall belong to, and become a part of, funds of that division of the Government or Municipality to which the principal shall belong.

In the case of Board of Supervisors of Kent County vs. Verkerke, 128 Mich. 202, the respondent was county treasurer of Kent County; he deposited with the bank in Grand Rapids a sum of money consisting of the following sums: Delinquent tax money belonging to the State, \$2,296.54; liquor tax money belonging to the city of Grand Rapids, \$2,096.66; delinquent school money belonging to the city of Grand Rapids, \$5,000.00; primary school interest money belonging to the townships in Kent county, \$20,000—amounting in all to the sum of \$29,393.20: He received from the bank two per cent interest on this sum, amounting to \$55.44, and did not account for or pay the same to his successor. The Board of Supervisors instituted proceedings in the Circuit Court for a writ of mandamus to compel the said treasurer to pay the interest received over to his successor in office. The writ was brought to the Supreme Court upon writ of certiorari. The Supreme Court reversed the order of the Circuit Court and issued the writ as prayed. The following is taken from the opinion of the Court:

"The respondent maintains that the title to public moneys coming to his hands on behalf of the State and city vested in him, and that the relation was that of debtor and creditor; that the law does not require him to deposit the funds, or contemplate the payment of interest; and that all that is required of him by law is that he account and pay over the amounts of taxes collected, to do which he is personally bound by law and by his bond. It is strenuously insisted that 'a public officer is not liable for interest or profits made by him from public funds, in the absence of a statute charging him therewith, when his liability for such funds is absolute.'

These funds came into the hands of the county treasurer by virtue of his office. He held them officially, and, whatever may have been his title to such funds under the law passed upon in the case of *Perley v. County of Muskegon*, 32 Mich. 132 (20 Am. Rep. 637), they are certainly public moneys under section 1197 of the Compiled Laws, which took effect three months after the *Perley Case* was heard in this court. Not only does section 1197 definitely establish the rule that such funds are public moneys, and therefore cannot belong to the custodian, but section 1198 requires him to keep them separate and apart from his own money, while section 1199 prohibits use by him for a private purpose under any pretext, and forbids the loan of such funds. Section 1200 provides that, where such funds are authorized to be deposited in a bank, the interest accruing shall belong to and constitute a general fund of the State, county, or other public or municipal corporation, as the case may be. Under this section, it is clear that, if such money was lawfully deposited, the interest does not belong to the respondent. His counsel seems to recognize this, but contends that the law did not authorize such deposit, and consequently that the county is not entitled to the interest. If this is true, the earnings from any unlawful and prohibited use of the money could be held by the county treasurer, notwithstanding the fact that section 1200 contemplates that earnings of such funds shall belong to the public. We think public policy should preclude the treasurer from asserting his want of authority to make the deposit. But, aside from this, the general rule that gives the *cestui que trust* the earnings of a trust fund is a sufficient reason for holding that the municipality, and not the treasurer, is entitled to this interest.

It is urged that the county is not entitled to this interest in any event, and therefore the board of supervisors have no right to this writ. We think section 1200 settles that question by providing that it shall constitute a general fund for the municipality represented by the officer.

The order is reversed, and the writ will issue as prayed, with costs of both courts."

In view of the holding of the Court in this case we take it that the law is well settled to the effect that a treasurer of a county, city, township or other division of government, can have no right to interest derived from the deposit of public funds. From the concluding paragraph of the Court's opinion it might be inferred that with respect to the township treasurer and city treasurer the county would not be entitled to the interest, and that hence the Board of Supervisors as representative of the County would have no right to institute proceedings for a recovery of the interest money, and that consequently they would have no power to investigate with respect to the same. We believe, however, that there is this distinction in the facts of the case referred to and the facts in the instant matter. In the instant case it appears to be the claim that the treasurer of the City of Saginaw, and the treasurers of various townships in Saginaw County, unlawfully withheld the funds from which interest was derived after such funds should have been turned over to

the County treasurer. In other words, they did not as required by law, pay over to the County treasurer the amounts which had been collected for State and County purposes up to and including the 10th day of January, within three days thereafter, but kept such funds on deposit in violation of law for a considerable period of time and converted to their own use the interest accruing from such deposit. Inasmuch as these funds were unlawfully withheld from the County we are of the opinion that any interest earned by a deposit of the same would follow the fund and would belong to the County of Saginaw, and hence it would be within the province of the Board of Supervisors of the County of Saginaw to institute proper proceedings for the recovery of the same. As before stated, the Board through a Committee has power to make any investigation that may be necessary for a complete discovery of the facts. In this connection we call attention to section 2476 of the Compiled Laws of 1897, the same being section 955 of Howell's Annotated Statutes, Second Edition, which, after providing the manner for the disposition of matters coming before the Boards of Supervisors, provides that: "Every chairman shall have power to administer an oath to any person concerning any matter submitted to the Board, or connected with the discharge of their duties, to issue subpoenas for witnesses and to compel their attendance in the same manner as courts of law." In view of the opinion already expressed, namely, That this investigation is within the province of the Board of Supervisors and is necessary in the discharge of their duties, and that the same may be done through a committee, it follows that such Committee would have a right to investigate all facts as to the funds collected and the disposition of the same. In our judgment it is competent for the Board of Supervisors to examine witnesses as well as the records of the county, city or townships, and the chairman of the Board may issue subpoenas for such witnesses as are necessary to ascertain the facts and such subpoenas may compel the production of the necessary records.

Trusting that we have sufficiently answered the inquiries submitted, I remain,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

MICHIGAN RAILROAD COMMISSION. Advertisements for sale of bonds authorized by the Commission.

February 8, 1916.

Michigan Railroad Commission, Lansing, Michigan:
Attention Mr. Glasgow.

Gentlemen—We have yours of the 4th inst. enclosing your Files D-875, with reference to the matter of Harris & Company or the Consumers Power Company advertising certain bonds. From the correspondence submitted it appears that the Consumers Power Company secured from the Michigan Railroad Commission authority to issue certain bonds; that the said bonds are being offered for sale by the Harris Trust & Savings Bank of Chicago; that the said bank is advertising the said bonds

for sale and are setting forth as part of said advertisement the words, in large letters, "Approved by the Michigan Railroad Commission." It appears also from the files that such advertisements are somewhat misleading with reference to franchises held by the Consumers Power Company. One Shelby B. Schurtz of Grand Rapids has complained to your Commission with respect to these matters and you request our opinion as to whether the Harris Trust & Savings Bank has properly advertised these bonds, etc.

In reply we are of the opinion that the advertisement in so far as the words "approved by the Michigan Railroad Commission" are used is very improper and very misleading. It is not the intention of the statute that your Commission shall pass upon the proposition of the bond issues by public utility companies for the purpose of recommending the purchase of such issues by the investing public. Consequently the word "approved" is very improper. If this Company had simply stated the fact that the issuance of the securities were, after an appraisal, authorized by your Commission there might not be any cause for complaint, but we believe the advertisement in its present form is improper and unauthorized and we would suggest that your Commission call this company's attention to the same, together with a request that these words be eliminated, or that your Commission will publicly correct the impression that the Company is attempting to create, or take such other steps as the laws of the State of Michigan may permit. We do not believe that it is within the province of your Commission to do more than this with respect to the matter as the statute confers upon you no jurisdiction to formally hear a matter of this kind. Neither do we think your Commission is directly concerned with misleading advertisements of this Company respecting franchises. If this Company puts out advertisements respecting franchises that do not accord with the facts, unquestionably Mr. Schurtz who has complained to you respecting the same may institute proceedings in the proper form which will have the desired result.

The files are herewith returned.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O—encls.

HIGHWAY LAW. Under section 4 of the trunk line highway act, the State highway department may not contract with a city for the construction of an inter-municipal bridge.

February 8, 1916.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Michigan:

Dear Sir—Act 334 of the Public Acts of 1913, the so-called State Reward Trunk Line Highway Act, provides in section 4 thereof that all bridges on trunk line highways that have a span of more than thirty feet, shall be constructed, repaired and maintained by the State Highway Department. It appears that some question has arisen as to the right of the State, under this section, to join with a city in building a bridge in a certain instance where the center of the bridge, and the stream spanned thereby, is the line between the city and township. I assume that the highway outside of the city in question is to be improved in

accordance with the statutory specifications as a part of the State Reward trunk line highway system. It is also a matter of inference that either the county in which the highway is located is not operating under the county road system, or that if such is the case, the board of county road commissioners has not seen fit to take over the municipal street as a county road. I conclude, therefore, that the burden of constructing and maintaining one-half of such bridge must necessarily fall on the municipality and such half may not be regarded as part of any State reward highway. The question at issue is, therefore, as to the right of the State to enter into contractual relations with the municipality and to construct such portion of a bridge as may be said to form a part of the State reward trunk line road.

It is significant to note that the section of the trunk line highway act referred to above does not provide for any such situation as is suggested by your inquiry. A fair interpretation of the language that the legislature has used leads to the conclusion that the duty of constructing a bridge having a span of more than thirty feet is imposed on the State when, and only when, all of such structure constitutes a part of the State reward trunk line highway. If any other view be accepted, it must follow as a matter of course that the State may, through the highway department enter into contracts with municipalities with reference to the construction and maintenance of such a bridge. As before pointed out, however, such power is not given in express terms; nor do I believe that it may be implied from the provisions of the act as it now stands. Had the legislature intended that the authority and the duty of the State should extend to and embrace a bridge of this character, undoubtedly a specific provision would have been incorporated in the statute authorizing the making of necessary agreements and indicating the terms and conditions thereof. Inasmuch as the act is in this particular a departure from the policy of the State that has previously obtained, it occurs to me that we must construe strictly the provisions of Act 393 that are in question. It is my opinion, therefore, that the State Highway Department may not enter into agreements with a municipality providing for the construction of an inter-municipal bridge, a part of which is situated in a State reward trunk line highway.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

ELECTION LAWS. Under sections 1 and 2, Act 155, P. A. 1915, county clerks are prohibited from securing election blanks from other sources than the secretary of state.

February 8, 1916.

Mr. S. J. Sullivan, County Clerk, Cheboygan, Michigan:

Dear Sir—I am in receipt of your communication of February 1st, in which you state that you would like to know if the purchase of election blanks, such as pole books, tally sheets, etc., by county clerks for the use at any general or primary election at which other than township or city officers are to be elected would be a valid claim against the county. In reply I beg to call your attention to sections 1 and 2 of Act 155 of the

Public Acts for 1915, which are so clear and directory that it seems to me that no further elucidation is necessary:

"Sec. 1. That the Secretary of State be required to prepare and transmit, at least sixty days before any general or special election, at which other than township and city officers are to be elected, to the several county clerks, suitable blank forms, together with the necessary poll books and tally sheets to be used in each election precinct at such elections, to enable inspectors of elections and township or city clerks to make returns of elections to the respective county or district board of canvassers.

Sec. 2. That the several county clerks shall, after receiving the blank forms, poll books and tally sheets, and at least ten days before any general or special election, at which officers shall be elected requiring the transmission of a statement of votes to a board of canvassers, deliver to the several township or city clerks of their respective counties a sufficient number of such blank forms, poll books and tally sheets to enable said township or city clerks and inspectors of election to make returns of such general or special elections to the respective boards of canvassers as required by law: Provided, That the purchase of election blanks mentioned in section one of this act, by county clerks for use at any general or special election at which other than township or city officers are to be elected, shall not be a valid claim against the respective counties."

It is my opinion that under the provisions of these sections, a county clerk would have no right to purchase supplies. The statute makes it obligatory upon the Secretary of State to furnish, prepare and transmit the necessary blanks for any general or special election to the county clerks of the various counties. I am, therefore, of the opinion that a purchase of election blanks by a county clerk would not be a valid claim against the county.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Mo-v-O

ABSENT VOTERS. Must register according to the provisions of the general and primary election law. The primary law does not apply to the selection of delegates to the various conventions to be held in the spring.

ELECTION LAW. Method of selection of district committee considered.

February 8, 1916.

Hon. Gillman Dame, Chairman, Republican State Central Committee,
Lansing, Michigan:

Dear Sir—You have recently requested this Department to advise you on the following questions:

- (1) Does the absent voter's law provide for registration by mail?
- (2) Do the provisions of the primary election law apply to the selec-

tion of delegates to the county, district and State conventions to be held this spring?

(3) As to the method of selecting members of the district committee?

(4) Is there any specified time provided for by statute within which the State convention to be held this spring must be called?

In answer to your first inquiry, I would respectfully call your attention to section 4 of Act 270 of the Public Acts of 1915, which provides in part as follows:

"As soon as the ballots are printed, the said clerk shall mail one each of the ballots to be voted as hereinafter prescribed to said absent voter provided he be properly registered or enrolled or will be a qualified elector at the coming election * * *"

It is apparent from the foregoing that the method of registration for voting at a primary or general election is to be determined by the general and primary election laws.

In answer to your second inquiry would say that the provisions of the primary election law do not apply to the selection of delegates to the various conventions to be held this spring and that the delegates to these conventions should be selected in the same manner as it has been customary to do in the past.

In answer to your third inquiry, I would respectfully call your attention to section 41 of Act 118 of the Public Acts of 1915, which provides in part as follows:

"The county committee provided for in this act, of each political party of each county of such representative or senatorial or congressional or judicial district, or the members of the county committee representing that portion of any county forming part of such representative or senatorial or congressional or judicial district, as the case may be, shall elect one or more electors of said political party, residing within the district that he is to represent, as a member of the committee of such political party for such district."

As this section making express provision for the selection of the members of the district committee is found in section 42 of Act 118 of the Public Acts of 1913, I am of the opinion that the method of selection pointed out by this section would govern in the selection of a district committee.

In answer to your fourth inquiry would say that the election law makes no provision for the time of the calling of the convention to be held this spring. It would, therefore, be discretionary with the State Central Committee as to the time and place same should be held, the only limitation being that imposed by the call of the national committee.

Trusting this will serve to furnish you with the information desired, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

COUNTY ROAD COMMISSIONERS. Whose term of office would expire May 1st, 1916, but for the provisions of Act 181 of 1915 continue to hold office until January 1st, 1917, and their successors shall be nominated by primary as other county officers and elected at the regular election the first Tuesday after the first Monday in November, 1916.

February 10, 1916.

Hon. Arthur D. Wood, Judge of Probate, Munising, Michigan:

Dear Sir—We are in receipt of yours of the 29th ult. requesting information with respect to the construction to be placed upon Act 181 of the Public Acts of 1915, the same being an amendment to the Highway Law providing for the election of County Road Commissioners. You ask as to the "status of the road commissioner of Alger County whose term of office expires May 1st, 1916. Does he hold over until January 1st, 1917. Should nomination petitions be filed for the office of county road commissioner for the March primary, is it necessary or amendatory to call and hold a primary, or does Act 181 of the Public Acts of 1915 repeal in its entirety that part of Act 283 P. A. 1909 covering the nomination of road commissioners in March?"

From your communication it would appear that the term of one of the County Road Commissioners of your County would, except for the provisions of Act 181 of the Public Acts of 1915, expire May 1st, 1916, and that you desire information as to whether in view of the provisions of the said Act, such road commissioner shall continue to hold office until January 1st, 1917, or whether it is necessary to hold an election in May of the present year for the election of a successor.

In reply, Act 181 of the Public Acts of 1915 is an amendment to section 6 of Chapter IV of Act 283 of the Public Acts of 1909 as last amended by Act 400 of the Public Acts of 1913. Previous to the passage of Act 181 of 1915, and under and by virtue of the provisions of Act 400 of the Public Acts of 1913, it was provided with respect to County Road Commissioners that: "In the first instance such commissioners shall be appointed by the board of supervisors or elected at a general or special election called for that purpose, as shall be ordered by the board of supervisors. If such commissioners are appointed they shall hold office only until the first day of May next following. Their successors shall be elected at the general election held on the first Monday in April following the date of their appointment."

Act 181 of the Public Acts of 1915 changes this by providing that such commissioner "shall hold office only until the first day of January in the year in which the next regular session of the Legislature is held."

Your communication does not state whether the present incumbent is holding by virtue of an appointment or whether he was elected for a regular term; but in our judgment in either case the same rule of law would apply in view of the fact that Act 181 of the Public Acts of 1915 provides that: "The regular election of county road commissioners shall be held at the general election on the first Tuesday after the first Monday in November, and the term of office of such county road commissioners shall commence on the first day of January in the year following their election."

We are of the opinion that there is no authority for now holding an election under and by virtue of previous Acts in the month of April and that such regular elections may only be held on the first Tuesday after the first Monday in November. In view of the fact that section 8 of Chapter IV of the General Highway Law provides that: "Each commissioner shall hold his office until his successor is elected and qualified" the present incumbent of the office in your County would hold his said office until January 1st, 1917, and an election for the purpose of choosing his successor should be held the first Tuesday after the first Monday in November, 1916.

Section 17 of the General Primary Law provides, in part, as follows:

"In every county in this State there shall be nominated at the said primary election by direct vote of the enrolled voters of each political party within such county, party candidates for county offices to be voted for at the November election following."

The office of County Road Commissioner is now within this provision of the primary law applicable to the nomination of other county officers. Hence the nomination must be made in the same manner and at the same time as the other county officers to be voted for at the next November election.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

VETERINARY LAW. Qualifications of applicant for registration and for examination considered.

February 11, 1916.

Mr. J. E. Ward, President, Michigan State Veterinary Board, Lansing,
Michigan:

Dear Sir—This Department is in receipt of your communication under date of February 8th in which you request the views of the Attorney General with reference to the disposition of two applications now pending before your board. The first case suggested is that of a veterinarian who, prior to the date that Act 45 of 1915 became operative, made application for registration under the State Veterinary Law as it stood at that time to a former secretary of the State Veterinary Board. Such application was made in good faith but was not received nor was the accompanying fee received by any officer or member of the Board. Under the circumstances suggested, I am constrained to the opinion that such application thus erroneously made cannot be given any force and effect for any purpose. It was incumbent on the applicant to ascertain to whom the application should be made and to whom the fee should be paid. If he was misinformed on this subject, there is no relief that can be afforded him by your Board, in view of the positive provisions of the statute. It is doubtless unfortunate but as suggested the State Veterinary Board is powerless. The making of the application to one not a member of the Board nor entitled in any way to represent it, did not invest the

board with jurisdiction of the case, and the good faith of the applicant cannot alter the situation in this respect. It follows that his rights at this time must be determined in accordance with the State Veterinary Law as amended by the Act of 1915, and if he wishes to become registered the procedure outlined by said act must necessarily be observed.

The second instance to which you call attention was the subject of an opinion given under date of November 2nd, 1915, to the secretary of your Board. It appears from our records that this particular applicant graduated several years ago from a college having a course of study of two years. Since such graduation, the course has been lengthened to three years and I infer that graduates of this institution at the present time are permitted to take the examination of your Board. It was suggested in the prior opinion referred to that this applicant could not insist upon his right to take the examination under the facts suggested. The question now arises as to the authority of the Board to extend to him the privilege. The intent of the law, as amended by Act 45 of 1915, seems to be that no one may take the examination unless he has had the prescribed preparation including three years course of instruction. I think that this provision of the law must be regarded as mandatory and that your Board is without authority to waive the requirement in any instance. It occurs to me, therefore, that the privilege in question of taking the examination may not properly be granted to this applicant.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

MICHIGAN RAILROAD COMMISSION. Under its delegated police power could make a valid order requiring the covering or partial covering of stock yards if the same is necessary to protect the stock confined therein from suffering from the weather.

February 11, 1916.

Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—

Attention Mr. Cunningham.

We are in receipt of yours of the 8th instant enclosing file No. 4102 relative to the covering of stock pens. From an examination of the file, it appears that a petition is to be filed before your Commission seeking to compel railroad companies to cover or partially cover stock pens. It does not appear from said file the particular reason upon which this application is to be based, that is, whether the same is considered necessary to relieve such stock from suffering while waiting for shipment, or whether the same is merely for the purpose of facilitating the loading or unloading of stock, etc.

There is no direct statute giving the Commission authority with respect to matters of this kind, but in this connection we would refer to an opinion rendered your Commission by this Department under date of April 19th, 1915. That opinion was in answer to a request as to the

existence of a statute or a Commission regulation regarding the watering of livestock confined in railroad stock yards. In answer to that inquiry, we quoted from Section 133 of the laws relating to railroads, revision of 1913, the same being section 44 of Act 300 of the Public Acts of 1909 as follows:

"The police powers of the State over railroads, street railways, interurban railways and suburban street railways, whether operated by steam, electricity or other motive power, organized or doing business in this state, shall be and the same are hereby vested in the railroad commission, and it is hereby made the duty of said railroad commission to exercise the same in accordance with the requirements of the law."

With reference to that subject matter, we stated:

"We are inclined to the opinion that it is within the police power of the State, by enactment, to require railroad companies to equip their enclosures or yards with water taps or pumps and provide for the watering by said railroad companies of live stock. By the section above quoted, the State has expressly delegated its police power over railroads, street railways, interurban railways and suburban street railways to the Michigan Railroad Commission. It consequently follows that any action that might be taken by the legislature with respect to this subject matter may, under such delegated authority, be taken by the Michigan Railroad Commission, and we are consequently of the opinion that it would be within the province of the Michigan Railroad Commission to promulgate a rule requiring railroad companies to perform this service."

If said application is to be based upon the proposition that such covering is necessary to prevent suffering by said stock from weather, etc., then in our opinion, the language used in the former opinion as above quoted is equally applicable to the instant matter and your commission would have authority, upon a proper petition, to make a valid order in the premises.

Your file is returned herewith.

Cr-v-O

Respectfully yours,
GRANT FELLOWS,
Attorney General.

PROSECUTING ATTORNEY. Receiving an annual salary from the county is not entitled to extra compensation for the defense of a damage suit against the said county, as defendant.

February 11, 1916.

Mr. Louis H. Osterhous, Prosecuting Attorney, Grand Haven, Mich.:

Dear Sir—We are in receipt of yours of the 29th ult. as supplemented by your further communication of the 1st instant wherein you request

the advice of this Department as to whether you may properly ask, and the board of supervisors may legally pay you compensation in addition to your salary for services rendered in defense of a civil action for damages, arising out of an injury on a claimed defective county road, against the county.

Section 2556 of the Compiled Laws of 1897 provides:

"The prosecuting attorneys, shall in their respective counties, appear for the State or County, and prosecute or defend in all of the courts of the county all prosecutions, suits, applications and motions, whether civil or criminal in which the State or county may be a party or interested."

From the wording of the provision above quoted, it is apparent that the defense of said action in which the county was a party defendant was a duty upon your part as prosecuting attorney of Ottawa County, and the performance of the same would be obligatory. Section 2562 of the Compiled Laws of 1897 provides that

"The prosecuting attorneys shall severally receive such compensation for their services, as the board of supervisors of the proper county shall, by an annual salary or otherwise, from time to time order and direct."

Also section 2649 of the Compiled Laws of 1897 provides:

"That the annual salaries of all salaried county officers, which are now or may be hereafter by law, fixed by the board of supervisors, shall be fixed by said board on or before the 31st day of October prior to the commencement of the term of such officers, and the same shall not be increased or diminished during the term for which such officers shall have been elected or appointed."

From your communication it appears that in conformity with the provisions of the last quoted section, the board of supervisors in your county at its October, 1914, session fixed the salary of the prosecuting attorney of your county at \$1,500 per annum. In view of this action by the board, it must be taken as conclusive that the salary as fixed was to be in full for all of those services which the law requires that you perform as prosecuting attorney, and inasmuch as the defense of the suit in question was a performance of the duty imposed by statute, I am of the opinion that the board of supervisors would have no legal right to grant additional compensation to you for the services performed in connection with the defense of the suit in question.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

EMBEZZLEMENT. In a prosecution instituted under the provisions of sections 11612, 11613 and 11614 it is not necessary to prove a felonious intent. Relative advantage of proceeding under certain statutes discussed.

February 14, 1916.

Mr. Frank F. Ford, Prosecuting Attorney, Kalamazoo, Mich.:

Dear Sir—We are in receipt of yours of recent date requesting our advice with respect to the prosecution of the case of People v. Harry F. Irvine, who is charged with the crime of embezzlement, under section 11563 of the Compiled Laws of 1897. You call attention to sections 11565, 11612, 11613 and 11614 of the Compiled Laws of 1897. It is apparent from an examination of these various sections that a prosecution for embezzlement may be instituted under any one of two or three statutes of the State. You state

“The particular question which I wish to ask is that in reading the embezzlement cases in this State, there seem to be practically no cases that have gone to our Supreme Court in which prosecutions have been started under the section I have used, or section 11563. I believe the case of the People against McKinney in 10th Michigan is about the only one that I have found.

If you can advise me in this regard I wish that you would do so, of the reason that section 11563 has not been used more in the prosecution of embezzlement cases. If there is any reason why it has not been used, I wish you would let me know, but it seems to be a fact that I am prosecuting this case under a statute which there is not very much authority on.

If you can advise me why this section of 11563 has not been used more frequently, I wish you would kindly do so.”

In reply the section in question is used in the case of People v. Smith, 25 Mich. 497, as well as in the McKinney case referred to. As to the reason for the use of sections 11612, 11613 and 11614 in preference to 11563, we call attention to the case of People v. Glazier, 159 Mich. 546. You will note from the language quoted at the page indicated that under the provisions of sections 11612, 11613 and 11614, a felonious intent is not an element of the crime. While an examination of the other statutes referred to will indicate that this felonious intent must be made to appear, I apprehend that this is the reason why prosecutions have in the main been instituted under sections 11612, 11613 and 11614, instead of under the other sections referred to. In other words, the case is more easily proved. I know of no other advantage to be derived from the use of these particular sections in preference to the others mentioned insofar as the facts of your case are concerned.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

PRIMARY ELECTION LAW. Circulation of advertising matter under sections 47 and 48 of primary law considered.

February 14, 1916.

Hon. Walter R. Taylor, Kalamazoo, Mich.:

My Dear Senator—I have before me your letter of the 11th instant in which you call attention to sections 47 and 48 of the primary law of the State and ask my opinion upon the following questions:

“Can a candidate lawfully circulate non-advertising matter, such for instance as a digest of the primary or election laws, in a pamphlet of two or more pages larger than $2\frac{1}{4}$ by 4 inches, provided there appears on no page any notice or advertising concerning his candidacy larger than $2\frac{1}{4}$ by 4 inches?

Can a candidate lawfully circulate non-advertising matter, as for instance a calendar, larger than $2\frac{1}{4}$ by 4 inches which does not contain on any page any notice or advertising concerning his own candidacy larger than $2\frac{1}{4}$ by 4 inches, provided it is not accompanied by any request that it be posted?”

Section 47 has reference to the posting of advertising matter, and the paying therefor rather than to the circulation of literature in the usual ways. Section 48 declares it to be unlawful to circulate or distribute “any campaign cards, hand bill, banner, poster or other advertising matter larger than two and one-quarter inches in width by four inches in length except postal cards and letters, or which contains any lithograph, half-tone, engraving, photograph or other likeness of himself, which likeness is larger than one and a half inches in width by two inches in height, excepting advertisements in newspapers, as hereinafter provided.” As drawn the inhibition of the statute is directed to the dimensions of the poster or particular advertising medium rather than to the amount of political advertising that may appear thereon or therein. Giving the language used its customary meaning, as we must of course do, the conclusion would seem to necessarily follow that both of your questions must be answered in the negative, unless such advertising be in the form of a letter or postal card, or is inserted in a newspaper as provided by the statute. The obvious purpose of the two sections of the primary law involved was to limit political advertising. Such purpose cannot be accomplished unless the inhibitions specifically laid down are carefully observed. Interpreted in accordance with established rules of statutory construction, I am constrained to the opinion that the particular provisions of the primary law involved in your inquiries may not be viewed in any manner other than as suggested.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

ELECTION LAW. Registration of electors considered.

February 15, 1916.

Mr. Nicholas F. Kaiser, County Clerk, Houghton, Michigan :

Dear Sir—You have recently requested the views of this Department upon the following matters arising under the election laws of the State:

- “1. Is there any party enrollment other than that made at the time of calling for your particular party ballot at the primary election?
2. Can a person register as a qualified elector by mail?
3. Can an absent voter register by mail?
4. Can a person register at any time during the year by appearing in person before the proper officer and requesting registration?
5. Can a person who registers on primary day vote at that particular election?”

Under the primary law in its present form there is no party enrollment in the proper sense of the term. One who is entitled to vote at a primary election may call for the ballot of any political party, and the same must be delivered to him. It is the duty of the inspector to make a note of the name of the party, the ballot of which is requested, together with the name of the elector and the number of such ballot. This, of course cannot be regarded as party enrollment. Rather such enrollment was done away with by Act 118 of 1913.

Replying to your second and third questions, I would say that there is no provision of the statute authorizing registration by mail. Various statutory provisions upon this subject seem to contemplate that each elector entitled to registration shall appear in person. The absent voters act is silent upon this proposition, although it clearly contemplates that a voter must be registered in order to avail himself of the privileges extended by that measure.

Section 4 of the general primary law permits any qualified elector to be registered by appearing in person before the officer who has charge of the registration book. There is no limitation with reference to the time of such registration, and it would seem to follow in consequence that any elector may take advantage of the permissive clause of this section and procure his name to be registered at any time. The same section expressly allows one to register on primary day and the right to vote at such election must be deemed to follow. Otherwise it is obvious that the privilege of registering on primary day would prove of no practical value. I believe that these suggestions as to the interpretation to be placed on section 4 of the primary law will answer your fourth and fifth questions.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

SCHOOL LAW. Apportionment of school taxes in fractional district governed by section 4707 C. L. 1897.

February 15, 1916.

Hon. Thomas G. Sullivan, Mayor, Munising, Michigan:

Dear Sir—You have recently requested the view of the Attorney General with reference to the assessment of school taxes in a district that is composed of the City of Munising and the township of Munising. The point at issue is whether such taxes should be based on the equalizing values as fixed by the county board of supervisors or on the values as fixed by the local board of review.

I note that you have consulted a local attorney upon this matter and that he has given you his opinion as to the course that should be pursued. It occurs to me that the district in question may be organized under a special act of the legislature. If such is the case, then the provisions of such act may be, and probably are, controlling upon the proposition. Doubtless the attorney whom you have consulted is conversant with all the facts and has examined the particular statute involved, as a basis for his conclusion. Undoubtedly he has advised you correctly in the premises.

Section 4707 of the Compiled Laws of 1897 governs the apportionment of school taxes in fractional districts that are organized under the general law. It seems to be the intent of this section that the assessing officers concerned shall determine at a joint meeting held for that purpose, the proportion of school taxes that each taxing district shall bear. In case of disagreement a supervisor from an adjoining township may be called in to assist in equalizing the valuations. As a practical proposition, however, it is probable that the values fixed in this way would be identical with those determined by the county board of supervisors. It would seem that it would be a proper course to pursue in such a case as you suggest to accept the equalized values as fixed by the county board and to apportion the school taxes between the city and the township on that basis, in all cases where the provisions of the general school law are applicable. As before suggested, however, if a particular district is organized under a special act, then the provisions of such act, if still in force, must be deemed to be controlling.

Respectfully yours,
GRANT FELLOWS.

Attorney General.

Ca-v-O

TOWNSHIP BOARD MEETINGS. In the absence of statute regulating time of calling meeting and who shall call same, the township board has in its discretion power to regulate said meetings.

February 15, 1916.

Mr. Edgar York, Township Clerk, Sears, Michigan :

Dear Sir—I am in receipt of your communication of January 26th wherein you ask :

“Who is to call township board meetings, clerk or supervisor?
And how much time is considered for a legal notice?”

“If a meeting is held and one of the members of the board is not legally notified, and is not present at the meeting, is the business done on that day legal or not. I would like your decision on this matter.”

Replying to your first and second inquiries will say that the statute does not prescribe what notice or how notices shall be given or by whom. The statute does, however, designate when the meeting of the township board shall take place. Section 2345 of the Compiled Laws of 1897 reads in part as follows :

“The township board shall meet annually on the Tuesday next preceding the annual township meeting to be held in such township, for the purpose of auditing and settling all claims against the township.”

I am of the opinion, however, that in the absence of statutory regulation your township board has the power to make its own rules determining who shall give notice of meeting and when such meeting shall occur. In like cases where no time is prescribed by statute a notice within a reasonable time should be given all members in order that they may be able to attend. I am also of the opinion that either the supervisor or township clerk may notify the other members of the board.

In regard to your last inquiry, whether or not business transacted by the board in the absence of one of its members, said member not being notified, is legal, I call your attention to section 2343 of the Compiled Laws of 1897, which reads :

“The supervisor, the two justices of the peace, whose term of office will soonest expire, and township clerk, shall constitute the township board, any three of whom shall constitute a quorum for the transaction of business.”

In my judgment, however, this provision contemplates notice to all the members. In the case of township board of Beaver Creek v. Thaddeus E. Hastings, 52 Mich. 528, a motion was made for writ of mandamus to compel the respondent who was the township clerk of Beaver Creek to enter upon the records of the township the proceedings of the meeting of the township board, but answer was set up that no notice was given and that a member was absent. The court held that no meeting of the

township board could be legal which was not attended by all the members unless it appeared that the meeting was duly called and notified. The mere attendance of a quorum does not make a legal meeting, but every member has a right to be present and participate in the action. *Boice v. Auditor General* 90 Mich. 324, where the above case was cited with approval. I would recommend that proof of notice be made and filed in your office.

Trusting the foregoing suggestions will assist you, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Mo-v-O

INDUSTRIAL ACCIDENT LAW. In case of accident to the caretaker of the Hanson State Military Reservation, insured in the State Accident fund, the compensation should be paid out of the accident fund, but the medical and hospital expenses should be paid out of the military fund and not out of the general fund of the State.

February 15, 1916.

Col. Walter G. Rogers, Quartermaster General, Lansing, Michigan:

Dear Sir—Your communication of the 10th inst. received as follows:

“There is enclosed herewith a bill from Doctors Insley and Keyport of Grayling, Michigan, covering services rendered in the case of Willard Case who is employed as caretaker on the Military Reservation at Grayling, and who was injured in the performance of his duties on the Reservation.

This bill has been returned to us by the Board of State Auditors through the Auditor General, with the information that the account should be paid from the Military Fund. We were previously informed by the Secretary of the Insurance Accident Fund that the account would be paid from the General Fund.

It is our understanding that in case of an accident of this kind, the cost of medical attendance for the first two or three weeks is paid by the department in which the injured is employed. Under Section 4, Act No. 172, Public Acts of 1913, it provides that the Military Board may appoint a general caretaker for the Reservation, and that his salary shall be paid out of the general fund of the State in the same manner as other State employees are paid.

An opinion is therefore requested as to whether this account should be paid by the Board of State Auditors or by the Quartermaster General from the Military Fund.”

In reply thereto would say that section 6 of Act 388, Public Acts of 1913, which governs this matter, provides that the Commissioner of Insurance shall determine the premium or assessment necessary to pay the *compensation* accruing under Act No. 10 of the First Special Session of nineteen twelve to persons in the service of the State, except that such premiums shall not cover the medical and hospital services and medicines as required by said Act, but the cost of same shall be paid by each

State institution out of its current expense fund, and he shall then certify the same to the Auditor General, and the Auditor General shall order the State Treasurer to credit to the "accident fund" * * * and the amount so credited by the State Treasurer to said accident fund shall be debited by him to the current expense fund appropriated by the Legislature for each State institution or department, * * *.

It is the evident intention of this provision that in case of an accident entailing a liability for compensation upon an institution or a department, the compensation is to be paid out of the accident fund and the medical and hospital services, etc., shall be paid directly out of the funds available for the expenses of the Department.

The injuries in question were suffered by the caretaker of the Hanson Military State Reservation appointed under the provisions of Act 172 of the Public Acts of 1913, as amended. This caretaker is appointed by the Military Board and in my judgment is an employe of the Board notwithstanding his salary is paid out of the general fund of the State. Under the circumstances, therefore, I am of the opinion that the claim presented by Insley and Keyport, if otherwise correct, should be paid out of the Military fund of the State, which must be regarded as a current expense fund for such purposes.

I return herewith the claim.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

ELECTION LAW. ABSENT VOTERS LAW. Section 15 considered.

February 15, 1916.

Mr. A. N. Buhler, Village Clerk, Mackinaw City, Mich.:

Dear Sir—Your communication of recent date requesting the views of the Attorney General as to the interpretation of section 15 of Act 270 of the Public Acts of 1915, the so-called Absent Voters Act, is at hand. Said section provides that caucuses, conventions and primary elections held for the purpose of nominating candidates for office shall be held at least twenty days before the election, the provisions of any other previous law or statute to the contrary notwithstanding. Section 5 of the act directs that the ballots for any general, special or primary election shall be in the hands of the clerk at least twelve days before the election. It occurs to me that these provisions must be construed as modifying the previous law with respect to the holding of caucuses, as laid down in section 11465 of the Compiled Laws of 1897. There is no change, however, as to the giving notice of the holding of any caucuses. As fixed by the last cited section, such notice must be given five days before the caucus is to be held. I am impressed that such period may be regarded as including Sundays and holidays under the general rule relating to the computation of time in such matters. Had the legislature intended that Sundays should be excluded in making the computation, it is probable that such provision would have been made.

It follows accordingly that under the provisions of the absent voters law, a caucus must be held not less than twenty days including Sundays

before the election and the ballots must be in the hands of the township clerk not less than twelve days before such date. Inasmuch as the township election this year is to be held on the 3rd of April, the 14th of March will be the last day upon which the caucus may be held. The twenty-day period is to be determined by excluding the day on which such caucus is held and including the day of the election. As stated notice of the holding of the caucus is to be given, as heretofore, not less than five days before the date thereof.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

PHARMACY LAW. A certain case considered and held to be within the application of Act 403 of 1913.

February 16, 1916.

Mr. Charles S. Koon, Secretary, Michigan Board of Pharmacy, Muskegon, Michigan:

Dear Sir—Act 403 of the Public Acts of 1913 makes provision for the registration as pharmacists of certain persons who were entitled to registration at the time when the present law went into effect, and also for the registration of "any person who has been an assistant druggist twenty-five years last past." It appears that the board now has before it the application of a certain person who has been engaged as assistant druggist for more than twenty-five years in the aggregate. During such period immediately preceding the making of the application, however, there was an interval of approximately one and a quarter years during which said applicant was not engaged in the business of an assistant druggist. The question arises as to whether, under the facts suggested registration may properly be granted to this person in the manner indicated by the act of 1913 above cited.

I am impressed that the words "last past" as used in the statute must be deemed to have reference to the period immediately preceding the making of the application. It seems to me, however, that in order that the legislative purpose may not be defeated in any part, the expression can scarcely be taken literally, that is, as requiring that no applicant may take advantage of the privilege extended unless he has been an assistant druggist continuously and without any intermission whatever for the period of twenty-five years. If such view were adopted, doubtless very few, if any, could take advantage of the statute of 1913. Rather it seems to me that it was the intention of the legislature that one who had been an assistant druggist for the period of time prescribed, immediately preceding the making of the application, and has followed such occupation substantially all of the period, may properly be regarded as within the scope of the act. It will be noted that the statute does not in express terms require the continuous pursuit of the profession for twenty-five years. Had it been the intention of the legislature to prescribe such a strict rule, I think we may assume that such form of expression would have been used as would make the intent clear.

It is my opinion accordingly based upon your statement of the facts

of the case, and upon the construction of the statute above indicated that the applicant in question may properly be regarded as within the scope of Act 403 of 1913, and that registration may be granted to him under the pharmacy law on the ground that he has been an assistant druggist for twenty-five years "last past."

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

ELECTION LAW. ABSENT VOTERS ACT. Certain provisions thereof considered.

ELECTION LAW. PRESIDENTIAL PRIMARY. Is to be regarded as a separate election.

February 16, 1916.

Mr. Howard L. Campbell, Prosecuting Attorney, Manistee, Mich.:

Dear Sir—Your letter of the 9th instant requesting my views upon several matters arising under Act 270 of the Public Acts of 1915 is at hand. The measure in question is the so-called absent voters act adopted pursuant to the recent constitutional amendment. Your first inquiry has reference to whether or not the clerk of the township, city or village, as the case may be, is required to forward a ballot to any postoffice within the county in case he is requested therefor in the manner prescribed by the statute. Section 2 clearly limits the scope of the measure to voters who are absent from the county when the election is held. It would seem to follow as a matter of necessary inference that one who is within the county can not be deemed to be an "absent voter" as such expression is used in Act 270. It will be noted, however, that one who expects to be absent from the county on the election day may make application either in person or by mail; and the ballot may be forwarded to him or actually delivered when the application is made if the clerk has such in his possession at that time. It occurs to me that if application is duly made in the form prescribed in section 3, same being duly sworn to, it would be the duty of the clerk to forward the ballot to the address specified without reference to whether or not the postoffice is within the county. In other words, the definition of "absent voter" suggested by the statute has reference only to the particular persons or class who may take advantage of the statute, and has no reference whatever to the duty of the official concerned to forward a ballot when requested therefor, in proper form, by one who is within the terms of the statute.

Your second question has reference to applications coming into the hands of the clerk more than thirty days before the election is to be held. Section 3 of the act permits any one who is within the various classes referred to in the title, and who expects to be absent from the county on election day to request the ballot "within thirty days next preceding" the day of the election. It does not occur to me, however, that the clerk should reject a request on the ground that the same reached him before such thirty-day period. Rather I believe that the same should be placed on file and treated in the same manner as are other applications on the theory that the obvious purpose of the measure does not require, or permit, that this clause be regarded as mandatory. Quite pos-

sibly a clerk might not be required to receive such premature application, but as suggested, I am inclined to the opinion that as a practical proposition he should do so.

Section 8 of the act relates to the forwarding of the ballots to the clerk of the township, city or village, as the case may be. The only method provided is through the United States mails. I think that such method must be regarded as exclusive. Quite possibly it was the view of the legislature that if a voter were permitted to send his ballot by messenger, an opportunity for fraud might be granted, and thus the intent of the law itself evaded. It is my opinion therefore that any ballot forwarded in any manner other than by mail as specified in said section 8 should be rejected by the clerk. These suggestions I believe will answer your inquiry along this line.

No specific reference is made in the act to women electors. I do not think, however, that it was intended to draw any distinction whatever of this nature. In other words, any one who is an absent voter within the meaning of the act, who belongs to the classes specifically designated in the title and in section 1 thereof, and who would be entitled to vote at the particular election in question may take advantage of the privilege extended by this measure. The reference in section 2 to elections held on propositions submitted to the voters other than those specifically enumerated would seem to suggest that the legislature had in mind the submission of questions upon which women, possessing the prescribed qualifications, are entitled to vote.

You call attention also to Act 219 of the Public Acts of 1915, which amends the statute of 1912 relating to the holding of so-called presidential preference primary elections. It seems to me that such election is to be regarded as wholly separate and apart from the regular township election. It is essentially a primary election and therefore must be presided over by a board of primary election inspectors. In other words, the inspectors act in a double capacity, conducting the regular election and the primary election simultaneously, and the lists should be kept accordingly.

Under the present primary law, there is no party enrollment such as obtained prior to the time that Act 118 of the Public Acts of 1915 became operative. The ballots for each party are printed separately and each voter may request and receive the ballot of any party that he prefers. The election inspectors are required to make note of the party, the ballot of which is requested, together with the number of the ballot and the name of the voter; but this procedure can, of course, be scarcely regarded as a party enrollment.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

JUDICATURE ACT. Bond of probate register and duty of county to furnish books under Chapter III thereof considered.

February 16, 1916.

Hon. Hugh A. Graham, Judge of Probate, Mt. Pleasant, Mich.:

Dear Sir—Your letter of recent date requesting my views upon certain provisions of the Judicature Act is at hand. Your first inquiry has reference to the bond of the probate register. In reply to your specific questions along this line, I would suggest that such bond should run to the People of the State of Michigan, and should be filed in the office of the county clerk. The Judicature Act itself seems to contain no provision upon either of these matters. It occurs to me, however, that the general rule should be observed in each case, that is, the bond should be in the customary form, and should be filed in the same place that the bonds of the county officers generally are filed.

Section 6 of Chapter III of the Act requires that

“Each county shall provide all books, printed blanks and other stationery necessary for keeping the records in the office of the Judge of probate and all furniture, equipment and supplies necessary for keeping and maintaining said office.”

The point at issue is whether or not this section should be construed as to require that the county furnish necessary law books for the use of the probate court. Insofar as the reference to books, printed blanks, etc., is concerned, the section quoted is substantially a re-enactment of section 683 of the Compiled Laws of 1897. Apparently, therefore, it was not the intention of the legislature to impose any greater liability upon the county in this respect than has heretofore obtained. Obviously it was the intention to provide for the keeping of records and to require that the county should stand the expense of the same. Under established rules of statutory construction the expression “all books,” as used in this section must be interpreted in connection with the obvious purpose of the entire section, and also in connection with other terms associated therewith. Its meaning is clearly limited by the inclusion of the terms “printed blanks and other stationery necessary for keeping the records.” I am impressed accordingly that this section cannot be regarded as requiring the county to purchase law books but, as suggested in your letter, has reference solely to necessary books of record.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

OFFICERS. A probate register appointed under the general law may not take the additional compensation prescribed by the judicature act during his present term of office.

February 16, 1916.

Mr. Thomas Sullivan, Prosecuting Attorney, Hastings, Michigan:

Dear Sir—Section 13 of Chapter III of the Judicature Act provides for the appointment of a probate register and for the payment of compensation thereto. At the time when said act became operative probate registers throughout the State except in counties subject to the provisions of some special act along this line were holding the office pursuant to section 2554 of the Compiled Laws of 1897. The section of the Judicature Act referred to is the re-enactment in a modified form of the earlier statute which is, of course, superseded. A considerably larger compensation is provided in the act of 1915 than in the earlier statute, such salary being based on population. The question arises as to whether or not probate registers holding office at the time when the Judicature Act became operative are entitled to receive the additional compensation thereby provided for the remainder of their terms.

Section 2554 declared that the probate register should hold the office "during the term for which the judge of probate making said appointment shall have been elected, unless sooner removed by said judge of probate." This same expression is used in section 13 of Chapter III of the Judicature Act. I am impressed that we must regard the probate register who has been appointed under the general law as being a public officer holding for a fixed tenure. The fact that the judge of probate has the power of removal does not alter the character of the register's tenure of office. That he is to be regarded as a public officer is, I believe, not open to question. The case would, therefore, seem to fall squarely within the scope of section 3 of Article XVI of the State Constitution, which contains the following inhibition:

"Salaries of public officers except circuit judges shall not be increased, nor shall the salary of any public officer be decreased after election or appointment."

It is my opinion that, in view of this provision of the Constitution, section 13 of Chapter III of the Judicature Act insofar as it provides for the compensation of probate registers cannot be regarded as applicable to probate registers who were holding their offices at the time when said act became operative, that is, on the 1st day of January of this year. Neither do I think that the inhibition of the Constitution may be avoided by a resignation and reappointment. The case of *Kearney v. State Board of Auditors*, 22 D. L. N. 1022, to which you call attention would seem to settle this proposition beyond question. It is my opinion accordingly that probate registers of the State who have been appointed under the general law and who, in consequence, hold for a definite tenure, may not draw any increased compensation for the balance of their terms.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

OFFICERS. Salary of present probate judges not affected by Judicature Act.

February 16, 1916.

Mr. Ward B. Connine, Prosecuting Attorney, Traverse City, Mich.:

Dear Sir—I have before me your letter of recent date with reference to the salary of the probate judge of Grand Traverse County under the Judicature Act. I note that said officer at the present time is receiving a salary of \$2,000 per annum. The salary fixed by the judicature act for counties having the population of Grand Traverse is \$1,300 per annum. The question arises as to which amount should now be paid.

The present probate judges of the State were elected at the November election of 1912 and assumed their respective offices on the 1st of January for four-year terms. Section 3 of Article XVI of the Constitution of this State contains the following provision:

“The salaries of public officers except circuit judges shall not be increased, nor shall the salary of any public officer be decreased after election or appointment.”

In view of this provision of the Constitution, it is my opinion that the Judicature Act insofar as it provides for the payment of salaries to probate judges cannot be regarded as applicable to those judges who are now in office. In other words, the scale of salaries fixed by said act will not become operative until the judges chosen at the next general election have entered upon their terms of office on the 1st of January, 1917.

Section 4 of Chapter III of the Judicature Act permits the board of supervisors by a majority vote of all members elect to pay additional salary to the judge of probate. It occurs to me that this power, like the legislative authority, must be exercised subject to the provision of the Constitution above referred to. If it is desired, therefore, to increase the salary of the judge of probate in any county under this clause of the Judicature Act, action to that effect should be taken by the board of supervisors before the election to the term for which the salary is to be increased. In other words, if the board wishes to provide compensation additional to that fixed by the Judicature Act for the term of office beginning on the 1st of January next, action should be taken before the election next November.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

MOTOR VEHICLE LAW. The Secretary of State may not revoke a license for a violation of the act.

February 16, 1916.

Hon. Coleman C. Vaughan, Secretary of State, Lansing, Michigan:

Dear Sir—You have recently submitted to me a letter, addressed to

you by the Commissioner of Public Safety of the City of Detroit, and have asked that I give you my views with reference to a certain question suggested therein. Said question has reference to your authority as Secretary of State to cancel or annul the license of any chauffeur, or any owner of a motor vehicle who is guilty of reckless driving or other violations of the motor vehicle law, it being assumed that documentary evidence establishing the fact of such conduct is placed before you for consideration.

The present motor vehicle law of the State does not in express terms give to the Secretary of State the power to annul a license. It is required that convictions for violations of the act shall be certified thereto by the magistrate before whom the proceedings are held. Thereupon it is required that the Secretary of State shall enter the fact of such conviction in an appropriate place therefor and shall also send notice to the clerk of each county of the State. No further power or authority with reference to violations of the act is granted to the Secretary of State. It thus appears that his authority in this respect is limited to the keeping of the record and the giving of the required notices to the different county clerks. It is my opinion, therefore, that he may not annul a license granted to any chauffeur or to the owner of any motor vehicle on proof produced before him of the fact that a violation of the law; nor may such action be taken even though a conviction for a violation of such act has been had in a court of competent jurisdiction. So far as the regulation of motor vehicles is concerned, the duties of the Secretary of State are purely ministerial and he may in consequence exercise only such power and authority as is granted by the statute, either expressly or by necessary implication.

I am returning herewith the letter submitted in your inquiry.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

TAXATION. Reservation of mineral rights and redemption from tax sales. Rule prescribed in 167 Mich. 206 followed.

February 16, 1916.

Mr. Herbert A. Brennan, Prosecuting Attorney, L'Anse, Michigan:

Dear Sir—Your communication of the 4th inst. received as follows:

“Our Supreme Court in the case of Negaunee Iron Company v. Iron Cliffs Company, 134 Michigan 264, has held that the ownership of undiscovered minerals constitutes an estate in the land. Upon this theory, the Supreme Court has held that the holder of a tax title must serve the statutory tax notice upon the record owners of the minerals reserved. Hanson vs. Hall, 167 Michigan 7.

Will you kindly give me your opinions upon the following propositions?

What amount of money must a holder of the title to minerals

reserved pay in order to redeem his interest from the holder of the tax title?

And if the owner of minerals reserved fails to redeem within the statutory six months' period, does his interest pass to the holder of the tax title?"

In reply to your first question would say that the holder of the title to minerals reserved would be obliged to pay the amount of the tax for which the property was sold, plus the one hundred per cent penalty and the five dollars for each description as in ordinary cases.

Answering your second question would say that undoubtedly the interest in the minerals reserved would be lost to the owner if he failed to redeem as provided by law.

In connection with both questions your attention is called to the decision of the Supreme Court of this State in the case of Loud vs. O'Brien, 167 Mich. 206.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

HIGHWAY LAW. Township Clerk is required to have the custody of books and papers relating to the Highway Department of the Township.

February 16, 1916.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Michigan:

Dear Sir—Your communication of the 3rd inst. received as follows:

"We have been receiving a large number of inquiries from local township officers in regard to the duties of Township Highway Commissioners with respect to the payment of money from the repair and improvement funds. In section 1 of Chapter XIII of the present Highway Law you will find the following:

"The township clerk shall be the clerk of the commissioner of highways, and shall, under his direction, record his proceedings in a suitable book to be provided by the clerk for that purpose at the expense of the township, and shall keep an accurate account of all orders drawn by the commissioner on the township treasurer, stating the amount of each, and in whose favor the same were drawn; and all books and papers relating to the business of the commissioner shall be preserved and kept by the clerk in his office, and he shall record, in a book to be kept by him for that purpose, all papers filed in his office relating to laying out, altering or discontinuing of roads."

Will you please rule on the following:

1. Are the township repair and improvement order books to be held by the highway commissioner or by the township clerk?
2. Are the orders valid if drawn by the highway commissioner, detached from the stub in the book and presented to the township clerk for countersigning?

3. If the order book is held by the commissioner and an order drawn and presented to a third party who in turn presents it to the township clerk for countersigning, would it be considered valid and should it be honored by the township treasurer?

Some question has also arisen as to the proper form to be used in drawing orders on the township treasurer. Will you please advise if the forms enclosed would be considered the proper form to be used?"

In reply thereto would say that Section 1 of Chapter XIII of the General Highway Law, which you have correctly quoted, expressly requires the Township Clerk to have the custody of all books and papers relating to the business of the Township Highway Commissioner, and this includes the order books. Your first question should therefore be answered in the affirmative.

Your second and third inquiries, which may be treated together, should be answered, in my opinion, by saying that the orders would be valid in the hands of third persons, if they appear to be correct upon their face when presented to the treasurer of the Township. Circumstances, however, might easily arise where knowledge on the part of the Township Treasurer of a violation of the Section above quoted, would not protect him in a wrongful payment of highway orders. Similar circumstances, and similar knowledge on the part of the holder of an order might also make it wrongful on the part of such holder in receiving payment of such order. It is largely a question of good or bad faith so far as the Township Treasurer and the holder of an order are concerned.

With regard to the blanks which you have submitted, namely,—An order on the Township Treasurer for road repairs; (2) An order for highway improvement; (3) For either; (4) Certificate of overseer of highways as to work done and materials furnished. The highway law does not specify the exact form of order. There appears to be on each form sufficient space and a proper place for a description of the kind of work and materials for which payment is being made. It would be difficult to make the blanks more specific and I would say that they are sufficient. Your attention, however, is called to form No. 28 on pages 187 and 188 of the Pamphlet Highway Laws of 1913, which I think is the better form to use.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

TAXATION. The vendee of personal property who takes the same after the making of the assessment and before the tax lien attaches is not liable for the taxes assessed for the current year. Personal property of a partnership or a firm may be reached by the proper court procedure for the assessment of taxes on said property.

February 16, 1916.

Mr. R. A. Turrel, City Treasurer, Coleman, Mich.:

Dear Sir—I am in receipt of your communication of January 29th in which you state the following:

“The David Drug Co. of this city owned, at time of assessment last April real estate to the value of \$1,800.00 and personal property to the value of \$1,000.00. Said David Drug Co., was composed of two individuals, S. O. and S. A. David.

They sold out to a firm sometime in September, retaining the real estate which is a store building which is now owned by the senior member of the firm, S. A. David.

There is no visible personal property belonging to the firm but there is personal property belonging to said S. A. David.

Question is: Is it possible for me to collect this tax on personal property or must it go unpaid and the city lose it?”

This question was passed upon by this Department July 15th, 1914, and I quote from that opinion as follows:

“Section 17 of the general tax law of the State provides that—
‘No change of location or sale of any personal property after the 1st day of May in any one year shall affect the assessment made in such year.’

Section 40 of the same law further provides that—

‘The taxes thus assessed shall become at once a debt to the township, ward or city from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall on the 1st day of December become a lien upon such real property, and the lien for such amounts and for all interest and charges thereon shall continue until payment thereof. And all personal taxes shall also be a lien on all personal property of such persons so assessed from and after the first day of December in each year, and shall take precedence of any sale, assignment or chattel mortgage, levy or other lien, on such personal property, executed or made after said first day of December, except where such property is actually sold in the regular course of business.’

From these provisions, it seems apparent that it was the intention of the legislature that the person to whom the personal property is assessed in conformity with the statute shall be held liable for the payment of the taxes levied thereon. As suggested in section 40 sales of personalty made after the 1st of December, and not in the usual course of business, are so made subject to the tax lien. I do not understand, however, that your inquiry has reference to transfers made after the date mentioned but rather

to those sales occurring after the making of the assessment and before the taxes are due and payable. Under such circumstances, the vendee takes the property free from the obligation to pay taxes thereon for the current year and collection of such taxes is to be enforced against the vendor in the manner prescribed by law. Section 47 of the tax law, which relates to the collection of taxes, provides that:

"The township treasurer, if otherwise unable to collect tax on personal property, may sue the person, firm or corporation to whom it is assessed * * *

It is obvious from a consideration of these provisions as well as other provisions of the statutes relating to taxation of personal property that the person against whom the assessment is made is liable for the payment of the tax and that a vendee who takes before the tax lien attaches can not be held for such payment. Upon this proposition I would call your attention to the decision of the Supreme Court of this State in the case of *St. Johns National Bank v. Township of Bingham*, 113 Mich. 203, in which it was held that a purchaser of bank stock prior to the 1st of December took the same free from any lien for taxes. The same rule applies, of course, to personal property generally."

In reply to your question: Is it possible for me to collect this tax on personal property, or must it go unpaid and the city lose it, I call your attention to section 3835 of the Compiled Laws of 1897, which reads in part as follows:

"For the purpose of assessing property and collecting taxes, a partnership shall be treated as an individual, and * * * each partner shall be liable for the whole tax."

The general rule is also laid down in *Bates on Partnership*, section 7457 of Volume 1, as follows:

"Each partner is liable in solido for all debts of the firm. This does not mean that one partner can be sued alone, which depends upon whether the liability is joint and several, but means that the entire fortune of each partner, not only that embarked in the business, but whatever he may own is liable to make good the firm's debts whether the other partners are liable to contribute or not; and regardless of the amount or proportion of his interest in the firm, whether it be large or small, the consequence is the same."

This rule has been generally followed by a great many courts throughout the country. You will, therefore, see from the above that the vendee of personal property who takes the same after the making of the assessment and before the tax lien attaches is not liable for the taxes assessed for the current year. Also where personal property is owned by a partnership or firm, the property of either one member or both may be reached by proper action as above indicated.

Trusting this will be of assistance to you, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Mo-v-O

STATE OIL INSPECTOR. The law does not prohibit State Oil Inspector going without the State of Michigan for the purpose of inspecting oil which is to be shipped within this State.

February 17, 1916.

R. E. Barron, State Oil Inspector, Howell, Michigan:

Dear Sir—I am in receipt of your communication of February 15th asking this department for a ruling upon the following:

“Some of the Oil Companies who operate outside of the State of Michigan, desire that I send a Deputy to Toledo to make inspection of a car lot of barrels so they can ship same into Michigan.”

Replying to your inquiry will say that Section 4954 of the Compiled Laws of 1897 as amended by Act 26 of the Public Acts of 1889 and Act 197 of the Public Acts of 1903, does not make it mandatory for the State Oil Inspector, or any of his deputies to go without the State for the purpose of making inspection of oil. On the other hand the law does not prohibit the inspector or his deputies from going without the State. I am, therefore, of the opinion that you or one of your deputies may go to Toledo for the purpose of making inspection of said car lot of barrels provided the expense is not borne by the State of Michigan.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Mo-pi-O

TAXATION. The board of review may add to the assessment roll personal property of non-residents coming into the assessing district subsequent to the making of assessment by the supervisor. Facts in Port Huron assessment discussed.

February 17, 1916.

Mr. Shirley Stewart, Prosecuting Attorney, Port Huron, Mich.:

Dear Sir—We are in receipt of yours of the 7th instant wherein you state:

“The assessing officer of a city, operating under the general tax law, without any special ordinance, on the second Monday in April in calling upon one of the merchants of his city to examine his stock, finds goods of a foreign corporation to the value of five hundred dollars, upon consignment with the merchant. He assessed the foreign corporation with personal property valued at five hundred dollars. In June, when the Board of Review meet, they go to the store, and at that time find in the possession of the merchant, upon consignment, goods of the foreign corporation of the value of twenty-five hundred dollars. They raise the assessment of the foreign corporation to twenty-five hundred dollars.

It will be borne in mind that the foreign corporation only had five hundred dollars of personal property on the second Monday in April, when the assessment was made, and increased the stock sometime between that date and the date of the meeting of the

Board of Review. The foreign corporation was not present at the meeting of the Board of Review and have not protested until this time.

The questions raised are:

1. Is the tax, as it stands at \$2,500.00, valid and collectible?
2. If not, can the foreign corporation be made to pay the original assessment at \$500.00?"

In reply, section 3837 of the Compiled Laws of 1897, the same being section 14 of Act 206 of the Public Acts of 1893, as amended, provides in part as follows:

"(8) Personal property of non-residents of the State * * * shall be assessed in the township, or ward, where the same may be, to the person having control of the premises * * * where such property is situated in such township, the second Monday of April of the year when the assessment is made * * *"

This Department has heretofore construed similar language under section 13 of the general tax law as not intending that every assessment against personal property should be made on the second Monday of April, but was for the purpose of fixing a date for the determination of the residence of the person assessed. In other words, the residence of a person on the second Monday of April should be deemed to be his residence for the purpose of assessing his personal property. This reasoning may be made applicable to section 8, here under consideration wherein it is provided that the personal property shall be assessed to the person having control of the premises, etc., on the second Monday of April. From the facts disclosed by your communication, it would appear additional goods were consigned to the merchant in this city subsequent to the making of the assessment by the assessing officer. Section 29 of the general tax law, the same being section 3852 of the Compiled Laws of 1897, provides in substance that on the Tuesday next following the first Monday in June, the board of review shall meet at the office of the supervisor at which time the supervisor shall submit to such board the assessment roll for the current year as prepared by him, and the said board shall proceed to examine and review the same, etc. It thus becomes apparent that the supervisor is entitled to the custody of the assessment roll up to the time the same is turned over to the board of review. The board of review under the provisions of this same section, "of its own motion, or on sufficient cause being shown by any person, shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township omitted from such assessment roll; they shall correct all errors in the names of persons and descriptions of property upon such roll and in the assessment and valuation of property thereon, and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this act. * * *" It is apparent from the above quotation that not only has the board the power to add property to the roll but also that the said assessment is not complete as an assessment until the matter has been examined into and if necessary corrected by the said board of review. Your communication does not state when the addi-

tional goods were received in the City of Port Huron, and the determination of the legal status of the matter may hinge largely upon this very fact if the same is made a subject of litigation, but we are inclined to the opinion that the board of review has the power to add personal property if the same is in their assessment district at the time the roll is in their hands for correction on the Tuesday next following the first Monday in June, and that consequently it was within the power of the board of review of the City of Port Huron to add the property in question. We are inclined to the further opinion that the assessment as made, namely \$2,500, would stand or fall as an entirety, that there would be no justification for attempting to proceed upon the original assessment of \$500. Again it may be possible that the failure of the individual assessed to appear before the board of review at the proper time for the purpose of protesting the assessment would amount to a waiver upon the part of the party complaining. However, the rule of law is quite well settled to the effect that it is not incumbent upon a person assessed to appear before the board of review for the purpose of protesting any assessment when the same has been made with respect to property not subject to assessment. In view of all the facts presented in this matter and the present status of the same, we are of the opinion that the only thing to do is to stand behind the assessment as made by the board of review.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-v-O

JUDICATURE ACT. Section 17, Chapter III, relative to fees of probate judges discussed.

February 18, 1916.

Hon. Edward P. Kirby, Judge of Probate, Grand Haven, Mich.:

Dear Sir—I am in receipt of your letter of the 10th instant asking for an opinion relative to the construction of the latter part of section 17 of Chapter III of the Judicature Act. You ask whether or not you may charge for the copy of order for publication sent to the paper which is attested to by the Clerk or Register as being a true copy.

Replying will say that such an attestation cannot be construed to mean a certification of the order for publication. The term certificate means, in my opinion, such a certificate as would be admissible as evidence, hence you would not be entitled to a certificate fee in such case.

In your second inquiry you state that “in admitting a will to probate, you attach a copy of the will, a copy of the order admitting the will and the certificate of probate under one exemplification” and ask if you should charge at the rate of eight cents for each. It occurs to me that inasmuch as the Act allows for certified copies of all other Probate orders seventy-five cents you would be entitled to charge this fee for making the copy of the order admitting will to probate, eight cents for making a copy of the will and the regular fee for the certificate.

Your third inquiry states that in appeal matters you make a record of the case for the Circuit Court and the copy of order allowing appeal forms part of the record. You ask “where the copy of order forms part only of what is certified to that the charge should be eight cents per

folio including the copy of the order." It appears to me that you would be entitled to charge the seventy-five cent fee for making a copy of the order allowing the appeal, but that you would not be entitled to charge eight cents per folio for the making of same as this would be charging twice for the same instrument and I do not believe the Act contemplates this.

Trusting that these suggestions will assist you, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Mo-pi-O

HAWKERS AND PEDDLERS. One soliciting orders by sample in the State of Michigan, sending the orders when taken to a City in Wisconsin for the filing of the same and shipping of the finished product to the purchaser in the State of Michigan is not amenable to the provisions of section 5329 C. L. 1897, known as the hawkers and peddlers act.

February 18, 1916.

Mr. H. J. Rushton, Prosecuting Attorney, Escanaba, Mich.:

Dear Sir—I am in receipt of yours of the 2nd instant enclosing an order blank of the Hauger-Martin Company of Oshkosh, Wis. From your communication it appears that said company has been sending agents into your county from outside the State who travel from house to house taking orders for suits, overcoats, rain coats and other goods by sample; that such agents do not carry with them the goods to be sold but that upon the taking of the order require a payment of one dollar; that the order is then forwarded to the company at Oshkosh, Wis., and that the suits, etc., as made up are shipped from that point to the purchasers. If these are the facts we are of the opinion that the provisions of section 5324 of the Compiled Laws of 1897, the same being known as the hawker's and peddler's law is not applicable to the agents in question and the failure to obtain a license under said act could not be made a basis of a prosecution for the violation of its provisions. In this connection we call attention to the case of *People v. Stewart*, 167 Mich. 417. In that case a conviction was sustained for the reason that the respondent solicited orders; that shipments were made in carload lots in bulk, unidentified and consigned to the respondent and that the orders were filled from such bulk in the State of Michigan. This case was subsequently reversed in the Supreme Court of the United States, the same being reported in 232 U. S. 665. In reversing the judgment of the Supreme Court of Michigan, the Supreme Court of the United States held that a State cannot consistently with the commerce clause of the Federal Constitution impose a license tax upon a non-resident merchant traveling from place to place within the State and soliciting orders by sample, lists and catalogue. This is in substantial agreement with the case of *People v. Bunker*, 128 Mich. 160. The facts as stated in your letter would, in our judgment, bring the instant matter squarely within the rule as laid down by the Supreme Court of Michigan in the *Bun-*

ker case and the Supreme Court of the United States in the Steward case.

Cr-v-O

Respectfully yours,
GRANT FELLOWS,
Attorney General.

MICHIGAN RAILROAD COMMISSION. An embargo against freight by carriers may be lawful or unlawful depending upon the facts of each particular case.

February 18, 1916.

Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—

Attention Mr. Cunningham.

We are in receipt of yours of the 16th instant enclosing file No. 6147, wherein it appears that Mr. W. J. Sallie, Manager of Sales for Parker Bros. Company, requests your Commission to state whether or not a railroad has a right to issue an embargo against terminal switching respecting certain commodities.

In reply you are advised that this Department is not in position to answer this question unless the same is reduced to a concrete example and all of the surrounding facts are disclosed. We are of the opinion that a railroad under certain circumstances and conditions may refuse to accept freight for switching if, by force of circumstances for which the carrier was in no way responsible, it was disabled from performing the duty imposed upon it by law. If otherwise, an embargo would be illegal and the company would have no right to refuse shipment. For the reasons above given, it is impossible to answer this question intelligently as an abstract proposition.

Cr-v-O

Respectfully yours;
GRANT FELLOWS,
Attorney General.

MICHIGAN RAILROAD COMMISSION. A private railroad not a common carrier cannot compel a crossing with another railroad engaged in the business of common carrier.

February 18, 1916.

Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—

Attention Mr. Cunningham.

In reply further to yours with reference to the inquiry of Mr. M. D. Olds, of Cheboygan, Michigan, requesting information as to the right of a private railroad to compel a crossing with an incorporated railroad, we are not just certain as to the meaning of the word "private" in Mr. Olds' communication, that is, as to whether he means an unincorporated railroad or one not doing business as a common carrier. If the rail-

road in question is not engaged in the business of a common carrier then there would be no way in which a crossing could be forced without the consent of the other railroad. The approval of maps by the Michigan Railroad Commission does not give the right to cross. In this connection we call attention to section 6261 of the Compiled Laws of 1897, the same being Compiler's section 183 of the Laws Relating to Railroads, revision of 1913. This section provides that "if the companies cannot agree upon the terms upon which the said crossing shall be made the company so desiring may acquire the right to make the same by condemnation in the same manner as prescribed by the act for obtaining title to real estate or other property and as provided in this act therefor." The Supreme Court of this State has held upon different occasions that property cannot be taken in condemnation proceedings except for public use. Consequently, unless a railroad is for the use of the public and engaged in the business of a common carrier, it cannot condemn a right-of-way or crossing. It is also very questionable whether a railroad privately owned, no matter what the nature of its business might be, could maintain condemnation proceedings. In any event your commission would have no authority to make an order for a crossing except with respect to companies, subject to jurisdiction of your commission.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-v-O

BUILDING AND LOAN ASSOCIATIONS. A minor may not become a member thereof under the law as amended by Act 273 of 1915.

February 21, 1916.

Hon. Coleman C. Vaughan, Secretary of State, Capitol:

Dear Sir—Section 7 of the Building and Loan Association Act (Act No. 50 of the Public Acts of 1887) as originally enacted permitted minors to become the owners of stock in any association organized thereunder. A reference to the language of said section will indicate the extent of the privilege conferred. It was provided, in part:

"Minors may become subscribers to and owners of the stock of such corporations by guardian or trustee, and such guardian or trustee may withdraw the stock of such minor, as provided in section 6 of this Act: Provided, however, That such guardian or trustee shall give bonds to the Probate Court in double the amount of the withdrawal value of such stock, for the use of such minor on his or her becoming of age; but it is hereby provided that the owner or legal representative of the stock of such association shall be entitled to vote at any election, when the stockholders are called upon to vote, in the manner provided in the by-laws of such association."

This section was amended by Act 273 of the Public Acts of 1915 and all reference to minors was omitted therefrom. The Act in its present

form, therefore, contains no specific clause authorizing minors to become owners of stock, or empowering the association to enter into contractual relations with any minor. Based upon this fact you have asked my opinion with reference to the following questions:

1st. Does this take away the power of a minor to either directly or indirectly own stock in a building and loan association?

2d. What effect if any does this repeal have on the method of withdrawal of such stock already issued?

One who acquires the stock of a building and loan association thereby becomes a member of the body corporate, and as such, is subject to the statute, the articles of incorporation, and the by-laws duly adopted pursuant thereto. Your first question, therefore, resolves itself into the proposition as to whether or not a minor may become a member of a building and loan association organized under the statute here in question. Or, conversely, may such association admit as a member one who is a minor? We are of course considering the situation from the standpoint of the association, with a view of determining what its powers and privileges are in the premises.

It would seem to follow as a matter of necessary inference that if a minor is to be permitted to become a member of a building and loan association, his status as such is the same as that of adult members. In other words, we may not read into the Act any special exempting clause, or any provision granting a special privilege, to any member or class of members. It is a basic proposition I believe, that one who is under any disability with reference to the making of contracts may not become a member of a building and loan association, in the absence of some positive provision of the statute authorizing such action. The general rule is suggested in the Note to the case of *Robertson vs. American Homestead Association* (Md.) 69 Amer. Dec. 145, where it is said: "Membership in building and loan associations is acquired by becoming the owner of stock, as in other corporations; and in general, any person capable of contracting may become a member by subscribing to its stock." Certain exceptions to the general rule as stated are further pointed out in the Note and the rule itself is re-stated in substance in 6 Cyc. 124, and 4 R. C. L. 345. It is significant to note that the Legislature of this State has deemed it necessary to incorporate in the Act a specific provision with reference to married women. It is also significant that the clause with reference to minors, above quoted, was included in the measure as first passed, evidently on the assumption that some specific clause of that nature was required to enable minors to become stockholders in a building and loan association.

The case of *Wolbach vs. Lehigh Building Association*, 84 Penn. State 211, further illustrates the proposition that one who is under any disability with reference to the making of contracts may not become a member of a building and loan association in the absence of express statutory authority. This case was decided before the present law of Pennsylvania conferring entire freedom of contract upon married women, was enacted. It appears that the plaintiff who was a married woman had purchased stock in the defendant association and had procured a loan therefrom. Action being instituted to foreclose a mortgage given as security,

the question was raised that plaintiff in error could not make a contract with a building association to pay dues and fines thereto. This claim was sustained by the Supreme Court on the ground that plaintiff was not capable in her own right of acquiring membership and assume the obligations incident thereto. It was said, in part:

"The provisions of the law under which the defendant in error was incorporated show that such associations are not chartered for the purpose of loaning money generally. It is a mistake to suppose that they have any such power. The fourth section of the Act of 1859 makes it their duty to offer, at stated times, the money in the treasury and loan it in open meeting to the stockholders who shall bid the highest premium; and in declaring that premiums and fines shall not be deemed usurious. The Act evidently refers to those paid by members only. It was intended to regulate the dealings between them and the association, and not between it and those who are not members or incapable of acquiring membership.'

It occurs to me that this comment on the Pennsylvania Act is applicable likewise to the Michigan statute, in so far as the question now under consideration is concerned. If a minor may become a member of a building and loan association under the law in its present form, then, as before suggested, his status as such member must be deemed to be the same as that of an adult who becomes the owner of stock. Such fact would necessarily carry with it, as I view the matter, the right to become borrower in accordance with the statute, the articles of association, and the by-laws. In other words, one who becomes a full member of such an association occupies a position other than that of a mere investor. By becoming the owner of stock he enters into a co-operative association, which is organized in the final analysis on the basis of mutuality and equality as between members. It will be observed that the provisions of the original Act of 1887, above quoted, are not broad enough to confer full rights of membership on a minor. Rather the privilege of subscribing to the stock in the manner designated is granted, with the consequent right of withdrawal, but without the right to become a borrower. It was therefore merely a limited privilege that was thus granted, and the powers of the building and loan association were correspondingly circumscribed in so far as the making of contracts therewith was concerned. If, however, a minor may become a member under the law as amended at the Session of nineteen-fifteen, with no provision whatever therein, either granting the privilege of membership, or in any way limiting the same such as minor must, as before indicated, be regarded as possessing the same privileges and subject to the same duties and obligations as are adult members. I am constrained to the opinion that it can not be presumed that the Legislature intended such a result to follow. Rather the inference is, in my judgment, that the amendment of nineteen-fifteen was intended to take away the right of a minor to become a subscriber to the stock of a building and loan association and to deprive such association of the privilege of dealing therewith, either in the specific form outlined in the prior statute, or in any other manner.

The contracts of a minor are, in the absence of express legislative enactment to the contrary, subject to certain incidents among which is the right to disaffirm. It occurs to me that such a right is clearly inconsistent with the privileges, duties and obligations attendant upon full membership in a building and loan association. The fines and forfeitures that may be imposed may result in placing a burden upon a member. Likewise, in case an association finds itself in such a financial situation that a final windup of its affairs is necessary a certain measure of liability may result as to the stockholders. Obvious rules of public policy necessitate that no member may relieve himself of the burdens that may thus devolve upon him. Patently a member might not be allowed to disaffirm any contract with the association under such circumstances; nor to avail himself of privileges denied to other members. It must be borne in mind that a building and loan association is a co-operative institution and that the element of mutuality must obtain as between the co-operators.

I call your attention upon this phase of the matter to section 47 of Endlich on Building Associations, Second Edition, in which the author has, in my judgment, suggested the correct rule of law. After reference to certain statutory exceptions to the general rule that only one who may enter into a binding contract may become a member of a building and loan association, it is said:

"It must be observed, however, with reference to these cases, in so far as they constitute exceptions to the general rule, that, as they depend entirely upon statute, and are in opposition to the common law, they are to be strictly construed, and are allowable only in such building associations as exist under the laws contemplated to govern them, and under the statutes of incorporation provided for them. And where the statute does by way of exception permit such membership, the license, without further authorization, extends only to allowing the enabled individual, or class of individuals, to become investing or depositing members of a society, and, as such, subject to its rules, and entitled to exercise the rights of membership; to withdraw the whole or any part of the investment, if and when the rules of the society and the statutes governing them permit members to do so; and to give a valid and effectual discharge to the society for any sum so withdrawn. It does not extend, without express provision to that effect, to an authority to borrow money, execute a valid security, or enter into any other contract with the association from which the subsisting inability, under the law, of the individual's condition, would, in the ordinary relations of life debar him."

I am impressed that in view of the authorities referred to and the general principles of law involved, a building and loan association organized under the laws of this State may not now admit a minor to membership therein. Inasmuch the privilege of being such a member can not be regarded as existing subject to all the incidents contemplated by the statute, it must, in the absence of specific provision of law, be regarded as altogether withheld. Obvious rules of public policy re-

quire that the liability of members of such an association may not be avoided except as specifically prescribed in the Act itself. A conclusion other than as above suggested would, in my opinion, violate such rules.

It does not occur to me that Act 273 of nineteen-fifteen can be regarded as affecting contracts already in force when said amendment became operative. As I view it, it may not properly be regarded as enlarging the rights and privileges of minors who may have previously acquired the stock of building and loan associations; nor may it take away any right or privilege existing under and by virtue of a valid agreement. It follows that all transactions entered into by virtue of those provisions of section 7 of the Act that were omitted by the amendment of nineteen-fifteen must be carried out subject to the incidents that pertained thereto at the time of their making. All such undertakings must be regarded as made pursuant to the permissive clause of said section, and therefore as subject to the same in so far as rights and liabilities are concerned.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O.

SCHOOL LAW. A contract signed by only one member of a school board is not enforceable.

February 26, 1916.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing, Michigan:

Dear Sir—I note from your letter of the 21st instant that in a certain school district of this State the board at a regular meeting adopted a resolution authorizing the director to hire a teacher at a definite salary. Said resolution was incorporated in the minutes of the meeting; a teacher was duly hired by the director, and a contract was executed signed by the director alone. The question arises as to whether or not such contract is legal and will so operate as to prevent the school board from discontinuing the services of said teacher, the employment having continued for a period of five months.

I assume that the district in question is organized under and subject to the general school laws of the State. Section 13 of Chapter III of that law provides that "a district board shall hire and contract with such duly qualified teachers as may be required; and all contracts shall be in writing and signed by a majority of the board in behalf of the district." I am impressed that this provision of the statute may not be ignored and that a school district may not be deemed to be legally bound by any contract with a teacher unless such contract is in the form prescribed by the statute and is signed on behalf of the district by a majority of the board. Of course, every school board is charged with notice of this statute and likewise every teacher who enters into a contract with a district is presumed to have in mind the provisions of the law under and by virtue of which such agreement is made. The case as stated by you is not one in which a contract fair on its face has been given and upon which the teacher in consequence may rely. Rather it

was wholly insufficient to bind the district and it necessarily follows that no valid contract between said teacher and said district may now be deemed to be in force. The school board may, therefore, take the action suggested by your inquiry.

As supporting this conclusion, I call your attention to the case of *Hutchins v. School District*, 128 Mich. 147. In this case plaintiff undertook to teach in the schools of the defendant district on an oral understanding or agreement. In this respect the case is comparable with the situation suggested by you, for an undertaking purporting to be signed by only one member of a district board is in contemplation of law no contract at all. It was held that the oral agreement so made was not enforceable. Likewise in *Langston v. School District*, 121 Mich. 654, the board of education had adopted a resolution that the plaintiff should be hired. No valid contract, however, was executed. It was held by the Supreme Court that the resolution of the board could not be regarded as constituting a hiring but rather was simply a direction to the proper officers to take the necessary steps, including the execution of the written contract. I believe that these cases and many others that have been decided by the Supreme Court on questions of this nature must be regarded as conclusive upon the proposition.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

SALVATION ARMY. If soliciting aid for charitable purposes in counties other than that of its domicile must observe the provisions of Act 68 of 1915.

February 25, 1916.

Mr. M. T. Murray, Secretary, Board of Corrections and Charities, Lansing, Michigan:

Dear Sir—On behalf of the Board of Corrections and Charities, you have recently requested my views as to whether or not the Salvation Army as incorporated under the laws of this State is subject to registration in accordance with the provisions of Act 68 of the Public Acts of 1915. It appears that articles of incorporation have recently been filed in the office of the Secretary of State by the Salvation Army, under Act 209 of 1897, as amended. Said measure is entitled: "An Act to revise, amend and consolidate the laws for the incorporation of churches, religious societies, church and Sunday schools, church societies and other societies for the purpose of diffusing moral or religious knowledge." The general purpose of the act is thus expressed; and the provisions of the statute are in conformity therewith. In its articles of incorporation, the Salvation Army expresses the general purposes of formation suggested by the statute and also declares as one of its prime objects that it is intended "to benefit the poor and needy by ministering to their needs and necessities." General reference is also made to the purposes of the Salvation Army, meaning presumably the New York organization, and to "charitable and philanthropic work" to be done by the Army. It would thus appear that the Salvation Army as now existing under the laws of the State of Michigan is organized for the furtherance of a

charitable purpose, among other objects. It may be assumed, I apprehend, that the purposes and all of them as expressed in the articles of incorporation will be carried out insofar as is possible. It occurs to me, therefore, that the army must be regarded as a charitable organization within the meaning of Act 68 of the Public Acts of 1915, and that in consequence, if it solicits public aid for charitable purposes in counties other than that in which it claims its domicile in Michigan, its agents and representatives so soliciting must be licensed in accordance with the statute. Such soliciting may, however, be done in the county where the Army has its situs in accordance with the final clause of section 1. This opinion is, of course, based on the assumption that the organization as such engages directly in charitable work in counties other than that of its domicile and solicits public aid. As I view the matter, it is not material to this inquiry that the purposes as expressed in the articles of incorporation are somewhat broader than those indicated by the statute under which the organization was affected. In other words, if the Salvation Army or any other organization operating in this State solicits public aid for charitable purposes outside of the county where it has its domicile, it must comply with this law; and the fact that the statute under which incorporation is had makes no specific reference to charitable work as one of the prime objects thereof constitutes no excuse for failure to comply. The question of fact at issue is therefore: Is the Salvation Army *as an organization* engaged in soliciting aid for charitable purposes in counties of this State other than the county in which it is located? If it does, then I am constrained to the opinion that it must observe the provisions of Act 68 of 1915.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. Any person who can show a special injury by an unauthorized obstruction in the highway may remove same.

February 26, 1916.

Mr. F. E. Stearns, Deerfield High School, Deerfield, Mich.:

Dear Sir—Your letter of February 18th has been received wherein you state that:

"B takes contract for building 12 miles of state reward road in Deerfield township. Begins work in fall of 1915 and is to have work completed by Sept. 1, 1916. He abandons work about Dec. 1, 1915 and has stretched wire cables at each end of his job, and at all cross roads; practically tying up the entire township. Has he a legal right to do so? If not and I remove cable from said highway, could he bring suit against me for removing cable."

I have observed that you do not state whether B was authorized by the local authorities to stretch the cables you speak of at the intersections of the various highways, nor whether B has temporarily or permanently abandoned his contract. Under your statement he has until September

1st, 1916, in which to execute his contract. Replying I would respectfully call your attention to section 4121 of the Compiled Laws of 1897 as amended by section 1 of Chapter VII of Act 283 of the Public Acts of 1909, which makes it the duty of the highway commissioner to remove any obstruction or encroachment upon the public highways, and the following sections provide for the enforcement of his order and penalty for refusal to comply therewith.

In the absence of more positive information, I also call your attention to the following cases decided by our Supreme Court. In the early case of *Clark v. Lake St. Clair & New Upriver Ice Co.*, 24 Mich. 504, Clark was sued for trespass in tearing down an icehouse of the defendant and justified the act as done in the abatement of a nuisance to the public highway in which he alleged the erection to be an unlawful obstruction. The court held that a nuisance in a public highway cannot be abated by a private individual on his own authority unless it does him a special injury and then he can only interfere with it as far as is necessary to exercise his right to passage along the highway. He can not justify doing any damage to the property of a person who has improperly placed a nuisance in the highway if avoiding it he might have passed on with reasonable convenience.

Also in the recent case of *Neal v. Gilmore*, 141 Mich. 519, decided in 1905, the commissioner of highways served a written notice on defendant to tear down a fence which the defendant had erected and which completely obstructed the passage of the highway. The court, speaking through Justice Blair, held that an unauthorized obstruction across a public street is a public nuisance which any one desiring to travel along the street may abate. If it were necessary to show a special grievance on the part of the individual abating the nuisance, we think such a grievance exists in the case of the highway commissioner by virtue of his office which gives to him the general care and superintendence of highways in the township.

I would conclude, therefore, in the present case that if B were legally authorized to stretch the cables at the highway intersections, then you would have no right to interfere and it would be a matter within the discretion of the highway commissioner. I would suggest, however, that you take this matter up with your highway commissioner with a view of avoiding any possible legal difficulties.

Trusting these suggestions will assist you, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Mo-v-O

FREE HOSPITAL SERVICE. Sections 6, 7 and 8 of Act 267 P. A. 1915, discussed. Expenses incurred by the county agent or Supt. of Poor and medical examiner shall be paid from the county treasury of the county so liable, direct to persons entitled.

February 26, 1916.

Hon. Arthur Long, Judge of Probate, Harrison, Mich.:

Dear Sir—Your letter of Feb. 14th, addressed to the Secretary of the

Board of Corrections and Charities, has been referred to this Department for an opinion as to the construction of certain sections of Act 267 of the Public Acts of 1915, relative to payment of the county agent or superintendent of the poor and medical examiner in cases provided for under this act. You ask—

“What I wish to know is, should the probate judge approve the expense bill and forward to the Auditor General in the same manner as expense bills incurred in sending children to the Hospital under Act 274 of the Public Acts of 1913, or should he order it paid direct from the county treasurer?”

In reply to your inquiry would say that it occurs to me that sections 6, 7 and 8 must be construed in the light of each other and not independently. Section 6 makes it obligatory upon the Auditor General to draw a warrant upon the State Treasurer payable to the Treasurer of the University of Michigan for amounts expended by the University Hospital as shown by the affidavit of the Medical Superintendent.

Section 7 provides that in counties where the county agent or superintendent of poor are not on a regular salary, their expenses incurred under this act shall, upon approval of the probate judge “be paid by the treasurer out of the general fund.” It will be observed that the act does not designate which treasurer, state or county, or which fund, state or county, the bills so incurred are so payable. In section 8, however, provision is made that the county from which any such patient is sent under any such order or decree of the probate court shall be liable for all expenses incurred under the provisions of this act, and the last part of this section makes it the duty of the State to collect from the treasurer of such county an amount of money sufficient to reimburse the State for all money expended “from the general fund of the State,” in carrying out the provisions of this act. Under this section, the county is liable for all expenses incurred in any event but it occurs to me that the county is liable to the State directly for only such an amount as has been expended from the general fund of the State. In construing this section with the one preceding, I am also impressed that the county should pay directly to the county agent or superintendent of poor and examining physicians, the amounts incurred under the act. While no express provision is made yet I gather this to be the intent of these sections, giving the expressions their most reasonable interpretation.

Trusting these suggestions will be of assistance to you, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Mo-v-O

LIQUOR LAW. WHOLESALE AND RETAIL. A certain contract between a wholesaler and a retailer for the furnishing of saloon fixtures held to be prohibited by section 2 of the general liquor law.

February 26, 1916.

Mr. Raymond Turner, Prosecuting Attorney, Norway, Mich.:

Dear Sir—I have your communication of 21st instant as follows:

“Is it a violation of Act number one of Public Acts of 1912, second extra session, for a brewing company to enter into a written lease or furniture receipt with a retail liquor dealer, whereby the brewing company furnishes and the liquor dealer acknowledges that he has in his possession certain saloon fixtures belonging to the brewing company, the said receipt or lease containing the following clause, ‘I do further certify that there is no agreement, contract or other understanding whatever, either written or oral, existing between me and said company, its agents or servants, whereby I am or shall be required to handle the beer manufactured or sold by said company to the exclusion of any or all other brands of beer, while making use of said property or any part thereof.’”

The reason for the above clause as I take it is to comply with the proviso in said act. ‘Provided, however, That nothing contained herein shall be so construed as to prevent any person, firm or corporation authorized to manufacture or sell such liquors at wholesale from furnishing the *same* to any person or firm authorized to sell such liquors at retail in free competition with all other persons, firms or corporations so authorized.’ It being contended that it is lawful to furnish saloon fixtures to retail dealers provided there is free competition.”

In reply thereto would say that section 2 of the general liquor law to which you refer contains in addition to the clause which you have quoted the following provision:

“Nor shall any such wholesaler pay or provide for the payment, advancement or loan of the license fee required to be paid by the retailer, or furnish, loan, rent or contract to furnish, loan or rent any fixtures or other equipment whether such fixtures are to be paid for in installments or otherwise * * *”

The above is an independent provision and is a part of a series of provisions intended to completely divorce the wholesale from the retail liquor business. The proviso which you have quoted in your letter is merely meant, in my judgment, to save the bare relationship by which a wholesaler is permitted to furnish liquors at wholesale to a retailer in free competition with all other persons, firms or corporations and does not affect the question of wholesaler being prohibited from furnishing, loaning, renting or contracting to furnish, loan or rent fixtures and other equipment to a retailer.

I am, therefore, of the opinion that the agreement between the wholesaler and the retailer as described in your letter comes within the denunciation of the statute and that your inquiry should, therefore, be answered in the affirmative.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-v-O

SCHOOL LAW. Neglect to file affidavit of qualifications does not render office vacant.

March 3, 1916.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Capitol:

Dear Sir—Section 5 of Chapter III of the General School Laws provides that within ten days after election or appointment the several officers of each school district shall file written acceptance, together with an affidavit showing that they are qualified. Section 2 of the same Chapter relates to vacancies in such offices, providing among other grounds that a school district office shall become vacant in case of neglect to file the acceptance of office or to give or renew any official bonds. In view of these provisions the question arises as to whether or not an officer who files the acceptance but does not file the required affidavit in connection therewith must be deemed to have vacated his office.

It will be noted that section 2 makes specific reference only to the acceptance. Both of these sections were amended and placed in substantially their present form by Act 21 of the Public Acts of 1903. At that time provision was incorporated in section 5 with reference to the affidavit. Had it been intended by the Legislature that the office should be vacant unless such affidavit was filed, undoubtedly specific provision to that effect would have been incorporated in section 2. The fact that this was not done may be taken to indicate that it was not intended by the Legislature to place the affidavit on the same plane as the formal acceptance. It is my opinion accordingly that where an officer files his acceptance the office does not become vacant even though the affidavit is not filed at the same time. Undoubtedly the purpose of the later instrument was to furnish proof as to qualification; but it would seem that the officer has a right to the office even though the same is not filed.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

SCHOOL LAW. Altering Boundaries of City School Districts Under Act 86 of 1909 considered.

March 3, 1916.

Mr. Leland F. Bean, Prosecuting Attorney, Adrian, Michigan:

Dear Sir—Act 86 of the Public Acts of 1909 provides for the changing of the boundaries of school districts in cities and the attaching to, or detaching therefrom, of adjacent property. Section 2 of the Act permits any person who resides on territory adjoining the city district or adjoining any school district, the boundaries of which have been fixed by legislation, and who desires to have their property attached to or detached from such district to address a petition to the board of education to have the desired action taken.

You have raised the question as to whether or not persons who are buying property upon contract may sign such petition.

It occurs to me that only one who may be said to be the owner of the land to be attached, or detached as the case may be, is eligible to sign the petition under this section. In the case that you have suggested the one who holds the land contract can scarcely be said to be owner of the land; neither would it appear to be equitable to permit such person to cause the property to be taken from one school district and attached to another. I scarcely think that the legislature intended such a result to follow. Clearly the holder of the legal title is entitled to be heard in the matter, but if we construe as giving to the holder of the contract the right to sign such a petition then the owner would be barred in the matter. It is my opinion accordingly that your first inquiry must be answered in the negative.

Your second question has reference to the right of a husband who owns land jointly with his wife to make such a petition. For reasons similar to those suggested above I am impressed that such privilege must be denied. In contemplation of law the husband and wife together are the owners of the property. In that case the husband alone is not the owner of the land within the meaning of the statute as I view it. To permit him to take the action suggested would be to accord to him an undue control of the joint property. In such a case the husband and wife should join in the petition.

Your third inquiry concerns the measure of discretion that the Board of Education of the city may exercise in case petition is filed under this Act. The statute directs that when the petition has been received, "the secretary of the board of education or board of trustees shall proceed as hereinbefore stated, and call a meeting of the Board of Education or Board of Trustees, and Township Board, and take action on such petition." It thus provides that it is the duty of the secretary to call a meeting at which the petition shall be considered and he must notify not only the members of the board of education and board of trustees, but likewise the members of the township board and boards concerned. The duty is clearly mandatory.

You suggest an instance where residents of two separate townships

have (apparently) joined in a petition under section 2. The point at issue is whether the boards of both townships should meet with the board of education of the city district, or if the latter board should meet with each township board separately. It occurs to me that the latter course should be observed. It scarcely seems that it was the legislative intent to permit a board of one township to have a voice, and quite possibly a determining voice, in deciding whether land in some other township should be attached to the city school district or be detached therefrom. I believe that the reference in the statutes to Township Boards (thus implying that in certain cases more than one township board shall be required to act) must be taken to mean that where a particular description or farm is situated partly in one township and partly in another, and the owners of such farm desire that the same be attached to a city school district, then the boards of both townships must act. If we attempt to give this clause any broader meaning than as suggested the result would be to confer upon local authorities the power to act outside of the particular township for which they were chosen. In the case you suggest, therefore, I believe that either new petitions should be presented, one from each township, or if the petition already filed is in such shape that the signers can be segregated; it is possible that it may be treated as a double petition and both of the necessary meetings held accordingly.

Section 4812 of the Compiled Laws of 1897 as amended provides for the granting of certificates to teachers on examination and in certain special cases. Among other provisos it is directed "that the Board of Examiners shall have the right to renew without examination the certificates of any person who shall have previously attained an average standing of at least 85% in all studies covered in two or more previous examinations." You request my advice as to the meaning of this proviso and especially as to the significance to be given the expression "Previous examinations." It seems to me that the clause quoted must be taken to mean that if a teacher has taken the examination for a certain grade of certificate two or more times and has attained an average standing of 85% specified, such teacher is entitled to have her certificate renewed. Stated concretely, if John Smith has taken the third grade examination twice and has attained the high rank contemplated by this proviso, thus implying that the certificate has been granted to him following each such examination, he is entitled, if he possesses the required teaching qualifications, to have his third grade certificate renewed. Likewise if he has obtained his second grade certificate two or more times with the average standing of 85%, he would be in a position to claim the privilege with reference to the renewal of such second grade certificate.

An average attained in an examination for third grade certificate may not be made the basis for the renewal of a second grade certificate nor, as I construe the statute, may the first grade be renewed because of high averages attained in writing for the second grade. On the other hand there would seem to be no reason why one who holds a third grade certificate, for example, and has previously attained the average of 85% in two or more examinations for second grade certificates should not be accorded the privilege of renewal.

I trust I have interpreted your question correctly along this line and that these suggestions will indicate to you my views thereon.

Yours respectfully,

GRANT FELLOWS,

Attorney General.

Ca-k-O

MICHIGAN SCHOOL FOR THE BLIND—BOARD OF CONTROL OF.

Has authority to grant the temporary use of institutional land to the city of Lansing for street purposes.

March 3, 1916.

Clarence E. Holmes, Superintendent Michigan School for the Blind,
Lansing, Michigan:

Dear Sir—You have submitted to this Department a certain proposed resolution of the Board of Control of the Michigan State School for the Blind, authorizing and empowering the City of Lansing to take possession of certain land belonging to the State of Michigan and to improve the same for public street purposes. From the Resolution and our conference with you, it appears that the State of Michigan owns certain land to the west and south of your present campus and that this land is for the purposes of your said institution; that the City of Lansing has heretofore closed that portion of Rogers street lying south of Warner Street and that portion of Maple Street lying west of a point fifty feet west of the intersection of the west line of Moores' subdivision with Maple Street. It appears further that this said closing was at the request of the Board of Control of your institution because of the fact that the use of said streets for public purposes was dangerous to the children of your institution and that in consideration of said street closings your Board of Control is desirous of permitting the City of Lansing to occupy a strip of land fifty feet in width off the east side of the land heretofore mentioned and belonging to the State of Michigan extending from the south line of Maple Street to the north line of Englewood Park Addition and a strip of land thirty feet in width off the west side of land belonging to the State of Michigan extending from Englewood Park Addition to Warner Street. It further appears that it is the intention of your Board of Control to petition the Legislature at its next session to convey these certain strips of land to the City of Lansing for public street purposes, and you request our opinion as to whether in the meantime your Board may by resolution authorize the City of Lansing to enter upon and use the land in question for street purposes.

In reply we are of the opinion that your Board of Control may, under the authority vested in it by statute, extend permission to the City of Lansing to use the said land for public street purposes. Of course, it is not within the power of your Board to convey title with respect thereto, in the absence of direct legislative authority or to grant any irrevocable right with respect to such land to the City of Lansing; but, as before stated, we are of the opinion that your Board has the right to grant to the City the privilege of temporary occupancy for the purpose referred to. The City, of course, in entering upon this land and

making the necessary street improvements must do so with a full understanding of the limited authority of your Board of Control, bearing in mind that an irrevocable grant can only come from the Legislature, and that any improvements or work done upon the same must, in the absence of such grant, be done at the risk of the City.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

MICHIGAN SOLDIERS' HOME. In Re: Sale of Shoes belonging to the State by members of the Home.

March 3, 1916.

Hon. George W. Stone, Lansing, Michigan:

Dear Sir—You have consulted with this Department with reference to a certain situation existing at the Soldiers' Home relative to the disposition by members of wearing apparel furnished them by the State of Michigan, and particularly with respect to sale of shoes made by one of the members of the Home to L. C. Williams, a store keeper whose place of business is adjacent to the said Soldiers' Home. You have submitted a letter from General William T. McGurrin, Commandant of the Home, who states:

"I discovered a few days ago that the storekeeper, L. C. Williams, who has a store just east of the Home, was buying shoes which were issued to members of the Home, and possibly other articles. I went up there and found that he had five pairs of shoes which he stated he had bought from the members of the Home, paying \$1.00 per pair for them. I told him that he had no right according to law to buy these goods or sell them, as they were State property and simply loaned to members of the Home, and that they had no right to sell them. He stated he thought he had a right to sell them * * *."

You have requested our opinion with reference to the proper action that should be taken by your Board with respect to this matter.

In reply, it is hardly necessary for us to say that inasmuch as the shoes are the property of the State of Michigan no member who is permitted to use such property has the right to dispose of the same and consequently no one purchasing such property from said members can make any valid claim to such property by reason of such purchase. We would suggest that a demand be made upon Mr. Williams for a return of all property belonging to the State of Michigan and purchased by him from members of the Soldiers' Home, and if such demand is not complied with then replevin proceedings should be brought by the Commandant in the name of the People of the State of Michigan against Mr. Williams for a recovery of the goods. Before replevin proceedings can be brought a specific demand for the return of the property must be made. If replevin proceedings are instituted and the State succeeds in establishing its title to the same all of the costs, including court

fees, etc., will be taxed against the defendant, Mr. Williams, and we think he should be advised of the situation and the possibility of being compelled to pay such costs before any action is taken. We would suggest further that a written notice be served upon Mr. Williams to the effect that the selling of the property in question is a violation of the laws of the State of Michigan, and that the purchase of such property by him is unlawful and that in the future he will be criminally prosecuted if a resort to such means is necessary to protect the property of the State.

The papers are herewith returned.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-encl

INHERITANCE TAX. Provisions of deed construed and tax to be computed against remaindermen.

March 6, 1916.

Hon. Clarence M. Russell, Judge of Probate, Jackson, Michigan:

In the Matter of Inheritance tax upon transfers in the Estate of Emanuel Hawley, Deceased.

Dear Sir—Judge Whittam of the Auditor General's Department called recently and submitted a question in the above matter growing out of a deed between Emanuel Hawley and his nephews, Joseph S. Hawley and Robert J. Hawley, and requested that we should write to you regarding the matter.

It is my understanding that Emanuel Hawley died intestate, leaving a widow who is upwards of seventy years of age; that shortly before his death he made the deed in question (March 10th, 1914) by which two hundred sixty-nine acres of land were granted in fee to the two nephews, subject to a rental contract, and subject further to the following condition: "But with the understanding and always providing that this instrument shall not go into force and effect until after the death of the grantor, Emanuel Hawley, and the wife of the grantor, Betsey Hawley, after the happening of which event it shall be of full force and effect." The deed is in warranty form and is signed by Emanuel Hawley, his wife as I am informed having refused to join in the deed. It is my further understanding that Mrs. Hawley, although having refused to join in the deed, has made no protest against its provisions, and that the parties thereto are agreed that the widow should have a life estate in the entire property.

The question raised by Judge Whittam is whether the widow's interest in the Estate is (a) An absolute one-third interest; or (b) an ordinary dower interest; or (c) a life estate in the entire property.

I think the first proposition can be eliminated from consideration as I do not understand Mrs. Hawley is claiming an absolute one-third. The second and third propositions it occurs to me are settled by the condition written into the deed which is above quoted. It would ap-

pear to have been the intention of the grantor to reserve a life interest in the entire estate for himself and his wife during their lives, the grantees having accepted the deed with that condition imposed. Unless some affirmative steps are taken to give this deed a contrary or different construction, it is my opinion that the State should not argue for a construction which would appear to be contrary to the intention of the grantor. I am therefore, of the opinion that as between Mrs. Hawley and the two nephews, the former has a life interest in the entire lands and the latter take as remaindermen and that the tax should be computed in accordance therewith.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

TOWNSHIP OFFICERS. INCOMPATIBILITY. Office of village and township treasurer not incompatible.

March 8, 1916.

Mr. George R. Robinson, Frankfort, Michigan :

Dear Sir—I am in receipt of your letter of March 6th asking if a citizen is eligible to hold the office of both village and township treasurer. In reply would say that there is no statutory prohibition relative to this and I know of no reason why a citizen may not hold the office of village treasurer and township treasurer at the same time.

Yours respectfully,
GRANT FELLOWS,
Attorney General.

Mo-k-O

PRIMARY ELECTION LAW. The number of ballots should be based on the party vote and it is not necessary to prepare for each party an aggregate of ballots equal to the total number of votes cast at the preceding general election for Secretary of State plus 25%.

March 8, 1916.

Mr. George W. Larkworthy, County Clerk, St. Joseph, Michigan :

Dear Sir—Your inquiry of recent date with reference to the number of ballots to be printed for the use of the electors at the primary elections to be held on the 3rd of April, is at hand.

The particular Act under which the elections are conducted do not contain specific provisions upon this point but refer rather to the general primary law of the State, it apparently being the intention of the Legislature that said Law should govern the details with reference to the preparation of the ballots.

Section 22 of the general Act, as last amended by Act 118 of the Public Acts of 1913, provides that: "the number of ballots to be printed for use at any primary election in any election precinct shall be at least twenty-five per centum more than the total number of votes cast therein

at the last preceding election for Secretary of State." The specific instance with reference to which you have asked for an opinion supposes that in a certain precinct a total of three hundred votes for Secretary of State were cast at the last preceding election. The point at issue is whether an aggregate of three hundred seventy-five ballots should now be prepared for said precinct; or if such number should be prepared for each political party on the theory that all of the electors may decide to vote the ballot of some one party to the exclusion of all others.

It seems to me that under the wording of the statute and the obvious intention of the Legislature as thereby indicated the first alternative should be followed. It can scarcely be assumed that electors affiliated with one political party will seek to vote the ballot of any other party. While section 22 of the primary law was enacted with specific reference to the so-called blanket ballot, whereon the tickets of all political parties were printed, we must now apply the same to the individual party ballots. Had it been the intention of the Legislature that there should be printed for each party an aggregate number of ballots equal to the total vote of all parties at the preceding general election, doubtless specific provision to that effect would have been incorporated in the Act. In other words, section 22 would have been amended so as to indicate such purpose. As the law now stands the total number of ballots to be prepared for all parties must be not less than twenty-five per cent more than the total number of votes cast. As a practical proposition, I am impressed that the election commissioners should divide such aggregate number of ballots among the various political parties, printing for each party such number of ballots as will equal the total vote of that party for the office of Secretary of State at the last preceding election, plus not less than twenty-five per cent. It will be noted that the Commissioners have discretion to print in any particular instance more than twenty-five per cent. it doubtless being the intention of the Legislature to provide for contingencies that might arise that would render desirable the printing of an additional number for particular precincts or wards. If, therefore, your Board has reason to believe that more than the additional twenty-five per cent should be provided as a matter of safety for the voters of any particular political party, you should be guided accordingly. As a general proposition, however, I think that the rule above suggested should be adhered to, and that the statute will be complied with if such is done. It can scarcely be presumed I think that the Legislature intended that the election commissioners should print such an enormous number of ballots as would be required if the voters of each party are furnished a number of ballots equal to the aggregate of all votes cast at the preceding election with an additional twenty-five per cent. Rather I think that the election commissioners should have in mind local conditions and should base the number of ballots to be prepared for the voters of each party on the vote of that party, preparing, of course, in each instance not less than the twenty-five per cent additional ballots, and as many in excess of that number as it is anticipated may be required.

Respectfully yours,

GRANT FELLOWS,
Attorney General.

Ca-pi-O

HIGHWAY LAW. The State Highway Department may construct a bridge of more than 30 feet span over a railroad cut.

March 8, 1916.

Hon. Frank L. Rogers, State Highway Commissioner, Lansing, Michigan:

Dear Sir—You have recently called my attention to the fact that a certain trunk line highway in Marquette County crosses the right of way of the St. Paul Railroad at a place where there is such a deep cut that it is necessary that a highway bridge over the Railroad be constructed. The question arises as to whether or not it would be lawful for your Department, in accordance with the provisions of the trunk line highway Act to construct this bridge, the cost thereof to be paid by the State.

I assume from your statement that the bridge in question will have a clear span of more than thirty feet. If such is the case it occurs to me that it comes within the provisions of Section 4 of the trunk line highway Act and that in consequence your Department may, and should, construct the same, assuming of course that the condition expressed in the proviso to that section is duly met. The fact that said bridge is to be constructed over a cut through which the railroad passes, rather than over a stream or other natural irregularity in the surface, does not, in my opinion, affect the situation so as to render section 4 inapplicable.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

DENTAL LAW. A registered dentist whose license is revoked for non-payment of the annual fee may be re-registered only on the payment of such fee, together with the penalty of \$25.00.

March 8, 1916.

Mr. E. O. Gillespie, Secretary, Michigan State Board of Dental Examiners, Stephenson, Michigan:

Dear Sir—Your letter of the 6th inst. with reference to the re-registration of a licensee under the Dental Law whose certificate has been revoked for nonpayment of his annual license fee, is at hand. The question arises as to the amount that must be paid by such person in order to secure the privilege of re-registering.

Section 5 of the Dental Law provides that when a registered dentist defaults in paying the annual fee his license may be revoked on thirty days' notice unless the fee is paid within that time. It is specifically declared that "upon the payment of said fee the Board shall reinstate the delinquent licensee." The following section provides that when a license or certificate of registration has been forfeited for any cause the same shall not be registered except upon payment of a penalty of \$25.00. It occurs to me that these sections must be construed together, and that in accordance therewith when a license is revoked for the reason stated the possessor thereof may not be reinstated unless he pays the annual fee

and also pays the penalty fixed by section 6. In the specific instance that you have stated, therefore, it is my opinion that the fee of \$1.00 should be paid as well as the penalty of \$25.00.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

HIGHWAY LAW. Under the trunk line Act the State Highway Department has no authority to construct an interstate bridge.

March 8, 1916.

Hon. Frank L. Rogers, State Highway Commissioner, Lansing, Michigan :

Dear Sir—Your communication of recent date with reference to the construction by your department of an interstate bridge over the Menominee River between Dickinson County, Michigan, and Florence County, Wisconsin, is before me. It appears that the terminus of the Dickinson County trunk line highway is the State line which is the center of said river. The point at issue is as to your authority to enter into an arrangement with the Wisconsin authorities for the building of this bridge, the State of Michigan paying one-half the cost thereof.

In our letter to you of February 8th, it was suggested that it would not be legal for your Department to construct inter-municipal bridges under the highway law, and the trunk line Act, in their present form. This opinion was based to a considerable extent upon the fact that the law does not give to you, as State Highway Commissioner, the authority to make the necessary contracts and agreements. I am constrained to the opinion that the same reason must be deemed to be controlling on the question that you now present. It is significant, I believe, that the Legislature, in defining the powers and duties of your Department with reference to the construction of bridges under the trunk line highway Act, has made no reference to either inter-municipal or interstate bridges. Quite possibly failure so to do was caused by an oversight; but we must construe the statute as we find it. In the absence of authority granted to you to enter into contracts with the proper authorities of other states, I am forced to the opinion that you may not properly do so. In the specific instance stated, therefore, inasmuch as you have not the authority to make the necessary agreements with the Wisconsin officials concerned, the authority to construct the bridge or portion thereof must necessarily be denied.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

TAX LAW. AUTHORITY OF VOTERS OF TOWNSHIP TO LEVY DOG TAX. Act 48, P. A., 1901, as later amended in 1911 and 1915, provides for sheep killed by dogs and method for collecting tax. Township cannot vote on this.

March 10, 1916.

Mr. Eugene Dimick, Justice of the Peace, Hillman, Michigan:

Dear Sir—I am in receipt of your letter of March 6th requesting information upon the right of the voters of your township at the annual spring election to vote on the question whether or not they will pay a dog tax or take the money out of the contingent fund for the payment of sheep killed.

In reply will say that it occurs to me that this is not a matter to be determined by the voters of your township inasmuch as the legislature has provided a general law taking care of this question. I refer to Act 48 of the Public Acts of 1901 as amended by Act 141 of the Public Acts of 1911 and later by Act 264 of the Public Acts of 1915, which is entitled: "An Act to provide for a tax upon dogs and create a fund for the payment of certain damages for sheep killed or wounded by them in certain cases" Section 1 referred to provides that "in all townships and cities of this State except in cities having and enforcing an ordinance imposing a tax or license fee on every dog owned or harbored in said city, there shall be annually levied and collected the following tax upon dogs * * *." The succeeding sections make it the duty of the assessor to ascertain the number of dogs and the duty of the tax collector to collect the tax prescribed by this act. This act is directory in its nature, hence cannot be abrogated by local action. It applies alike to all townships, villages and cities, therefore, is not local in its application. I am of the opinion that this is not a proper question to be presented to the voters of your township, as the general laws of the State cover it fully.

Trusting this will give you the desired information, I am,

Very respectfully,

GRANT FELLOWS,

Attorney General.

Mo-v-O

ELECTION LAW. ELECTION INSPECTORS. Act 249, P. A., 1915, allowing election inspectors \$3.00 per day and the same rate for parts of days construed to mean solar day of twenty-four hours.

March 10, 1916.

Mr. R. E. Vickers, Gobleville, Michigan:

Dear Sir—I am in receipt of your letter of March 1st relative to compensation of members of the election board. You ask whether or not election inspectors can draw pay for more than one day in each twenty-four hours under the provisions of section 95 of Act 248 of the Public Acts of 1915.

The portion of the act referred to reads as follows:

"The officers composing the township boards, board of registration, board of health, inspectors of election, clerks of the poll and commissioners of highways, three dollars per day and at the same rate for parts of days."

You desire to know whether a day shall be construed to mean a working day or a solar day of twenty-four hours.

Replying will say that the statutes are silent as to what shall constitute a day's work in matters of this kind and I have been unable to find that our Supreme Court has determined the question. This question has been squarely determined, however, by at least one court. I refer to the case of the People v. Town Board of West Turpin, 59 N. Y. Supp. 234, 235, where the court used the following language:

"'Day' as used in the law, providing that election officers for each day actually and necessarily devoted by them to the discharge of their duties shall receive two dollars per day, will be held to mean the ordinary legal day of twenty-four hours and not the ordinary working day."

It is true that our statute contains provisions regulating the hours of certain kinds of work. It is likewise true that the statutes do not prescribe what shall constitute a day's work for election inspectors. In legal contemplation, a day is not divisible into units unless so made by statute. If a different conclusion were reached you can see what mischief might follow. I am, therefore, of the opinion that under the provisions of the act in question the election inspectors are entitled to receive three dollars per day for a day of twenty-four hours for work actually and necessarily performed.

Trusting these suggestions may assist you, I am,

Very respectfully,

GRANT FELLOWS,

Attorney General.

Mo-v-O

PRIMARY LAW. Certain provisions of the Charter of the City of Grand Haven discussed.

March 10, 1916.

Mr. Leo C. Lillie, City Attorney, Grand Haven, Michigan:

Dear Sir—I am in receipt of yours of the 3d instant requesting my opinion with reference to certain provisions of the Charter of the City of Grand Haven. This is a matter which I had some conversation with you about over the telephone the other day. From such conversation, and from your letter it appears that certain provisions of your Charter are as follows:

"Sec. 16. The council shall be the Board of Canvassers for all elections. On the first Thursday after any election the council

shall meet at seven-thirty o'clock P. M., and proceed to canvass the returns of such election and shall thereupon declare the result and what persons are nominated or elected."

"Sec. 21. The two candidates receiving the largest number of votes, in the non-partisan primary in the whole election district for any office, shall be the candidates whose names shall appear upon the succeeding general election ballot for said office: Provided, That if there be but one candidate in the primary for a given office, then the primary for said office shall be final and he shall be declared elected and no second election shall be held in connection with said office. If there be more than one candidate in the primary for a given office, and if any one candidate receive a majority of all votes cast for said office at said primary, then said primary for said office shall be final and he shall be declared elected, and no second election shall be held in connection with said office."

You also state that the controversy in question has occurred with reference to a certain ballot which reads as follows:

"Aldermen for the Two-Year Term

VOTE FOR TWO

Edward Kieft
John B. Moll
Arie VanToll
Charles W. Cotton
Richard Dykema."

And that the number of votes each received at the primary were as follows:

"Edward Kieft	175
John B. Moll	179
Arie VanToll	581
Charles W. Cotton	476
Richard Dykema	298
Total double vote	1,709"

You state that you have advised the City Council that under the provisions of the Charter above quoted, Arie VanToll and Charles W. Cotton were elected Aldermen at the primary and no further election for this office is necessary.

I am of the opinion that your advice in this matter is proper and that the reasoning by which you have arrived at this conclusion is sound. Section 21 of the Charter provides, in part, that "If there be more than one candidate in the primary for a given office, and if any one candidate received a majority of all votes cast for said office at said primary, then said primary for said office shall be final and he shall be declared elected, and no second election shall be held in connection

with said office." Inasmuch as two candidates were to be voted for upon each ballot, then the total number of votes, if all voted, would of necessity be a double vote and in my opinion if any one candidate was voted for by a majority of those voting at such primary that candidate would, under the provisions of section 21 of your Charter, be elected and if Arie Van Toll and Charles W. Cotton each received the votes of a majority of those voting at the said primary, then they should be declared elected as aldermen for the two year term.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

INCOMPATIBILITY. The offices of Justice of the Peace and Supervisor should not be considered incompatible and the election of a person holding the office of Justice of the Peace, as supervisor would not create a vacancy in the office of Justice of the Peace.

March 10, 1916.

Hiram R. Smith, Prosecuting Attorney, Roscommon, Michigan:

Dear Sir—We are in receipt of yours of the 6th inst., requesting our advice as to whether there is a vacancy in the office of justice of the peace in Roscommon Township. From your communication it appears that in the year nineteen-twelve one of the justices of the peace of said Township removed from the County and that the Township Board thereafter met and declared the office vacant. At the following spring township election another person was elected for three years to fill the vacancy and that the person so elected thereafter duly qualified. The following year, nineteen-fourteen, the person elected to fill the vacancy in the office of Justice of the Peace was elected Supervisor of the Township and qualified for that office and held it for one year. You state:

"It was claimed and is now claimed by the Justice who left in nineteen-twelve as above stated that this person can not hold the office of Justice and Supervisor at the same time. No vacancy was declared in the office of Justice by his being so elected Supervisor or for any other reason."

The term of office of the person elected to fill the vacancy caused by removal from the County of the Justice first elected, would not terminate until July 4th, 1916, unless the acceptance by him of the office of Supervisor would have the effect of creating a vacancy in the office then held by him, namely,—Justice of the Peace. This would not result unless it be held that the offices of Justice of the Peace and Supervisor are incompatible. This Department has heretofore held that in the absence of a judicial determination the offices of Supervisor and Justice of the Peace should not be held incompatible. Therefore, in our opinion, the acceptance by this individual of the office of Supervisor did not cause a vacancy to occur in the office of Justice of the Peace. Therefore, there was no authority for the filling of such vacancy and conse-

quently the election of the original Justice to the office of Justice of the Peace upon the supposition that the incumbent of the same had accepted the office of Supervisor would be irregular and without avail. We note what you say as to your advice in the matter and are of the opinion that the position that you have taken respecting the same is proper.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

ELECTION LAW. Various provisions discussed.

March 10, 1916.

Mr. C. H. Ebmeyer, Salem, Michigan:

Dear Sir—We are in receipt of yours of the 7th inst. wherein you ask:

“Can a township clerk act as poll clerk when his name is on the ballot?

Does the absent voters’ law apply to all voters who are absent or just the five classes of voters named?

Does a man ever lose his right to vote? ‘For instance a man moves out of his voting precinct ten to fifteen days before election and can’t gain a residence in another voting precinct can he vote in either?’ ”

In reply to your questions in the order presented:

1st. The only statutory inhibition relative to a candidate acting as an election officer is that a candidate for office may not act as an inspector of election.

2nd. The absent voters’ law applies only to those classes mentioned in the Act itself.

3rd. A person who removes from a voting precinct to another with the intention of giving up his residence in the former, but not being in the new precinct a sufficient length of time to permit him to vote in such precinct can not vote in either for the reason that he is no longer a resident of the first and has not gained the statutory residence prescribed in the second.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

SCHOOL LAW. Qualifications of voters at school elections.

March 10, 1916.

Jeannette S. Warner, Corresponding Sec'y, Grand Rapids Equal Franchise Club, 412 Fourth National Bank Bldg., Grand Rapids, Michigan:

Dear Madam—We are in receipt of yours of the 6th inst. wherein you request our advice as to whether under the provisions of Act 146 of the Public Acts of 1913, and particularly Section 17, it is intended that only those citizens who are either assessed for school taxes or are parents or legal guardians of children of school age, etc., shall vote at such election, whether male or female, or whether it is intended that male electors shall be permitted to vote even though they are not assessed for school taxes and are not the parents or legal guardians of children of school age.

In reply, Section 17 provides that: "Every citizen of the United States of the age of twenty-one years, male or female, who owns property which is assessed for school taxes in the district, or who is the parent or legal guardian of any child of school age included in the school census of said district and who has resided in said district three months next preceding such election, shall be a qualified voter. On the question of voting school taxes, every citizen of the United States of the age of twenty-one years, male or female, who owns property which is assessed for school taxes in the district, and who has resided in the district as above stated, shall be a qualified voter."

You will note from the language thus employed that the right to vote is not granted unless the person, male or female, be the owner of property assessed for school taxes in the district, or unless such person is the parent or legal guardian of any child of school age included in the school census of the district; and on the question of voting school taxes only those who own property in such district assessed for school taxes, are entitled to vote. I apprehend from your question that you have become somewhat confused because of the second proviso contained in this section, which proviso is to the effect that the provisions of this section shall not be applicable in any city having a population of 250,000 or over which comprises a single school district. This, of course, would apply only to the City of Detroit. In such City under this proviso, all male persons who are qualified electors as prescribed in section 1, Article III of the Constitution of Michigan, and all females who if they were males would be qualified electors, shall be qualified to vote in school elections and on questions of voting school taxes. In other words, in addition to having the qualifications prescribed by Section 1, Article III of the Constitution of Michigan, a person must be the owner of property assessed for school taxes in the district in order to vote upon the question of raising school taxes, but in addition to those so qualified one who is the parent or legal guardian of a child of school age included in the school census of the district may vote in all other school elections and in the City of Detroit any person who is a qualified voter under the constitutional provision referred to, regardless of whether such

person is the owner of property assessed for school purposes or the parent or legal guardian of a minor child, may vote with reference to such matters and all females having the qualifications prescribed by the said section and Article of the Constitution, except that such person is not a male may also be entitled to vote.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

ELECTIONS. Caucus and citizenship matters discussed.

March 10, 1916.

Mr. E. A. Pilon, Perkins, Michigan:

Dear Sir—We are in receipt of yours of the 2nd inst. requesting information with reference to various provisions of the election laws.

In answer to your question relative to caucus matters, you are advised that the caucus is the judge of the various matters coming before it and may make its own rules of procedure, etc. We know of no way to prevent those participating in a caucus for the nomination of "a Township Ticket" from also participating in a caucus called for the purpose of nominating "A Citizens Ticket."

You also request advice as to whether a person who declared his intention to become a citizen less than two years ago is a qualified elector. In reply, you are advised that such person is not a qualified elector.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

DRAIN LAW. The statutory provisions require that the first publication of notice of citation shall be at least fourteen full days before the day of hearing and requires that in computing such time the day of publication and the day of hearing shall both be excluded.

March 10, 1916.

Hon. Hugh A. Graham, Judge of Probate, Mt. Pleasant, Michigan:

Dear Sir—We are in receipt of yours of the 3rd inst. requesting an interpretation of Section 4324 of the Compiled Laws of 1897, and particularly the following words "and shall be published in some newspaper published and circulated in the County in which such lands are located, for at least two weeks previous to the day of hearing;" and "the first publication of such notice shall be at least fourteen full days before the day of hearing." You ask: "If this citation is published on the second and ninth days of any month and the hearing held on the sixteenth, will the law be complied with according to the above language pertaining to the drain law?"

In reply, inasmuch as this section requires that the first publication shall be at least fourteen full days before the day of hearing, it follows

that it would not be proper to publish the citation on the second day of the month for the first time and hold the hearing on the sixteenth of the same month for the reason that fourteen full days would not elapse between the date of such notice and the date of the hearing. Where the words "fourteen full days" are used, then in such case the day of publication and the day of hearing must both be excluded and if the first publication is on the second day of the month the hearing could not be held earlier than the seventeenth day of the same month.

You also request our advice as to whether the Probate Court has the right and authority to select the newspaper in which the said citation shall be published.

In reply, you are advised that, in our opinion, the selection of such newspaper, within the limitations provided by statute, rests entirely with the Probate Court.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

STATE BOARD OF HEALTH. May not employ its own members under Act 238 of 1915.

March 13, 1916.

Hon. John L. Burkart, Secretary, State Board of Health, Capitol:

Dear Sir—You have recently requested an opinion from this Department upon the proposition as to whether or not the State Board of Health may employ its own members to carry on the work contemplated by Act 238 of the Public Acts of 1913. Said measure makes an appropriation for the purpose of making a tuberculosis survey of the State and the prosecution of a campaign to lessen the ravages of that disease. The expenditure of the money appropriated is placed in charge of the State Board of Health which is given authority to employ medical men and nurses and other experts.

There is no specific provision in the Act to the effect that said Board may contract with its own members for the doing of work under this measure. In the absence thereof, I am constrained to the opinion that the general rule must obtain and that in consequence members of the Board should not be employed thereby. I note your reference to Act 293 of 1909 whereby a member of the Board may be appointed as a State Medical Inspector and as such may draw compensation. The fact that the Legislature saw fit to incorporate this specific provision in the Act of 1909 must necessarily be construed as a recognition of the proposition that unless the law expressly allowed such employment the general rule prevailing in such cases would operate to prevent it. It is doubtless unfortunate that some provision of this kind was not included in Act 238 of 1915; but we must, of course, construe the measure as we find it and can not in consequence read into it any provision granting authority to the State Board of Health that is not warranted by the language employed. I am impressed, therefore, that legislative action is necessary in order to justify the action suggested by your inquiry.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

ELECTION LAW. Section 5 of the Absent Voters' Act has not superseded the provisions of the General Election Law or the Primary Law with reference to the manner of delivery of the ballots.

March 14, 1916.

Mr. Richard Lewis, County Clerk, Charlevoix, Michigan:

Dear Sir—Section 5 of Act 270 of the Public Acts of 1915, the so called Absent Voters' Act, makes reference to the delivery of the ballots by the County Clerk to the Clerks of the various townships, villages and cities. The exact manner of such delivery is not specifically pointed out, although the language of the section, standing alone, would perhaps lead to the inference that it is the duty of the County Clerk to deliver the ballots at the offices of the local officials entitled thereto. You have asked that I give you my views upon the matter.

Under the general election law, and also under the Primary Law, it is the practice that such ballots shall be called for by a member of the local board of election inspectors and delivery is made by the County Clerk accordingly. It does not occur to me that it was the intention of the Legislature, in the enactment of the Absent Voters' Law, to change this mode of procedure. It is significant to note, as I view it, that no method is pointed out by which the County Clerk is to deliver said ballots, if that duty is placed on him. It would seem to follow as a matter of implication that the General Election Law and the Primary Law were considered to be controlling on this proposition. I think we may assume that if the Legislature had intended to change the authorized and recognized practice specific provision to that effect would have been made, and a method would have been indicated by which the County Clerk might make delivery to the offices of the various township, village and city clerks throughout the County. I am, therefore, not prepared to say that the General Election Law and the Primary Law, insofar as provision is made for the delivery of the ballots, has been repealed by the provisions of section of the Absent Voters' Act, especially in view of the well established rule of statutory construction that repeals by implication will not be favored. Rather I am inclined to the opinion, as before suggested, that the same method of procedure that has heretofore obtained should be followed now.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

EXTRADITION. One who is accused of a misdemeanor may be extradited out of another State.

March 14, 1916.

Mr. Frank F. Ford, Prosecuting Attorney, Kalamazoo, Mich.:

Dear Sir—I have before me your letter of the 10th instant with reference to the extradition out of another State of a fugitive from justice from this State who is charged with a violation of the local option law. The federal statute governing this matter, section 10126, United States Statutes of 1913 includes all cases of "treason, felony or other

crime." It appears, therefore, that the federal enactment is sufficiently broad to warrant the extradition of fugitives from justice who are accused of having committed a misdemeanor. I see no reason, therefore, why as a matter of law one who is charged with a violation of either the local option law or the Pray Act may not be extradited.

I am sending you herewith copy of the rules and regulations governing requisitions that is put forth by authority of the executive office and call your attention particularly to the eleventh paragraph thereof. If you have a case of the character suggested, however, I would advise that you make application for the requisition, if you believe that the offender should be brought back in the interests of justice.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

MICHIGAN RAILROAD COMMISSION. Official Classification No. 43 requiring shippers to place a value upon household goods and limit liability to the sum stated is not in violation of Act 300 of the Public Acts of 1909 as amended by Act 278 of the Public Acts of 1915.

March 14, 1915.

Michigan Railroad Commission, Lansing, Michigan:
Attention of Mr. Glasgow.

Dear Sir—We are in receipt of yours of the 8th inst., wherein you state:

"We are pleased to direct your attention to Compiler's Section 59, Section 7 (e) of Act 300 of the P. A., 1909, as amended by Act 278 of the P. A., 1915, and note that said section states in substance that the railroad company shall issue a receipt or bill of lading covering the transportation of any shipment tendered, and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, etc., to which said property may be delivered or over whose line or lines such property may pass, and *no contract, receipt, rule or regulation shall exempt such common carrier from the liability hereby imposed.*

Official Classification No. 43, effective January 1, 1916, to which all railroads in Central Freight Association territory subscribe, on page 180 under "Household goods and emigrant moveables, including old or used furniture, prepaid," states as follows:

"9 When the value of the shipment *exceeds* ten (10) dollars per hundred (100) pounds and the consignor so states (subject to Notes 1 and 3) (C. L., Min. wt. 12,000 lbs.) (subject to Rule 27), the rate shall be 1½ times first class in less than carloads and first class in carloads."

"10 When the value of the shipment *does not exceed* ten dollars per one hundred (100) pounds and the consignor so states (subject to Notes 2 and 3) (C. L., min. wt. 12,000 lbs.) (subject

to Rule 27), the less than carload rate as first class and carload rate second class."

Notes 1 and 2 read as follows:

"Note 1.—When the value is stated the following clause must be entered in full on the shipping order and bill of lading, viz.:

"The value of this shipment *exceeds* ten (10) dollars per one hundred (100) pounds and is stated for the purpose of enabling the carrier to apply the proper published rate.

.....'"

"Note 2.—When the value is stated the following clause must be entered in full on the shipping order and bill of lading, viz.:

"The value of this shipment *does not exceed* ten (10) dollars per one hundred (100) pounds and is stated for the purpose of enabling the carrier to apply the proper published rate.

.....'"

Signature.

In other words, it has been the custom of the carriers to ask a release from liability in case of loss or damage, especially on household goods, to \$10 per one hundred pounds, and in such case the shipper is entitled on less than carload lots to first class rate. If such release contract is not entered into he is charged $1\frac{1}{2}$ times first class.

When Official Classification No. 43 was filed this Commission was asked to permit its filing and to approve of the same, presuming that Michigan intrastate movements of household furniture would be governed thereby, and the Commission, either thoughtlessly, ignorantly or otherwise, permitted the filing of such classification and have permitted carriers to make settlement for loss and damage to household goods shipments on the basis of \$10 per hundred pounds when such contract was entered into.

It would appear from a reading of the section referred to as amended in 1915, that it forbids the entering into any such contract or placing any limitation upon the carrier's liability, except such as the shipper is able to prove in case of loss or damage. In view of the section referred to the Commission are rather of the opinion that they exceeded their authority when they permitted the filing of the Official Classification in question and committed the shippers of Michigan to the rules therein referred. We confess that in many instances the shipper would enjoy a decided benefit through a $33\frac{1}{3}\%$ less rate by the execution of such a contract limiting the carrier's liability.

The Cummins Amendment states that the carrier shall be liable to whatever damage the shipper can show he sustained and forbids the making of such a contract the same as the Michigan law seems to.

The Cummins Amendment in substance states as follows:

"The carrier may require shipper to specifically state in writ-

ing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation dependent upon the value of the property shipped as specifically stated in writing by the shipper."

Therefore, the Interstate Commerce Commission in their interpretation of the Cummins Amendment are allowing the carriers to require the shipper to declare the value of the goods shipped and to name a lower rate than where declaration is not made.

What we really desire information on is whether this Commission may continue to acknowledge and be governed by Official Classification No. 43 as pertains to the shipment of household goods, or must we be governed by the 1915 act herein referred to and notify the carriers that they are not permitted to enter into any kind of a contract upon the declaration of the value of the goods whereby a lower rate may be given shippers in view of an agreed limited liability."

In reply would say that we are of the opinion that the Official Classification No. 43 is not in violation of Act 300 of the Public Acts of 1909 as amended by Act 287 of the Public Acts of 1915. Section 7 (e) of the said Act as amended provides:

"That any common carrier, railroad or transportation company receiving property for transportation from a point in the state of Michigan to another point within the state of Michigan, shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which said property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule or regulation, shall exempt such common carrier, railroad or transportation company from the liability hereby imposed: Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law: Provided further, That the property so received for transportation shall move entirely within the boundaries of the state of Michigan between the points of shipment and its destination: And provided further, That the common carrier, railroad or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company, on whose line or lines the loss, damage or injury shall have been sustained, the amount of such loss, damage or injury as it may be required to pay to the owners of such property as may be evidenced by any receipt, judgment or transcript thereof."

This section, at least in so far as the same pertains to the subject matter of exemption from liability, is patterned after and is an exact copy of the Federal enactment known as the Hepburn Act as amended by the so-called Carmack amendment.

The New York Court of Appeals in the case of *Greenwald et al vs.*

Barrett 199 N. Y. 170, was called upon to construe the Hepburn act under the following state of facts. Greenwald, the plaintiff, brought action in the municipal court of the City of New York to recover \$235.00, this being the alleged value of merchandise delivered by him to the Adams Express Co. for transportation from the City of New York to the city of Waukegan, Ill., but never delivered to the consignee. The defendant admitted a receipt of the property and the undertaking of the Adams Express Co. to forward the same to the destination indicated, but pleaded that shipment was accepted under special contract whereby it was provided that the package and its contents were of the value of not more than \$50.00, and that the charges for forwarding the same were fixed and regulated according to such valuation. It was further averred in the answer that it was by said contract expressly agreed that the Adams Express Co. should in no event be liable for an amount greater than the valuation so placed on the package and its contents, viz. \$50.00; and that no statement of the value of the package was made to the Express Co. or to any one of its employes, at the time of the delivery and shipment thereof, although said value was asked by the agent of the company who received the same.

The contract of limitations was embodied in the express receipt signed by the agent of the Adams Ex. Co. at the time he received the goods in its behalf. To defeat the limitation of liability sought to be effected by this clause in the express receipt, plaintiffs rely upon the provision contained in the act of Congress commonly known as the Hepburn Act, and this provision relied upon was, as before stated, in the exact wording of the Michigan statutory provision, and the sole question before the court was whether this provision of the Hepburn Act prohibited the Express Co. from making a contract of this kind with the shippers. The court decided that the Hepburn Act did not prohibit the Express Co. from entering into the contract in question, and consequently held that a recovery could be had only for the contract sum, viz. \$50. With reference to the Hepburn Act, the court said, "The purpose of the provision of the Hepburn Act from which we have quoted was obvious. It was to render the initial carrier, in the case of interstate transportation over connecting lines, liable to the lawful holder of its receipt or bill of lading for any loss or injury to the property whether such loss or injury occurred after the goods had passed out of the hands of the initial carrier or not; and furthermore to prevent interstate carriers from exempting themselves from liability from the loss of property or damage thereto after it had passed into the hands of another carrier to be transported to its destination. The language of the enactment does not disclose any intent to abrogate the right of common carriers to regulate their charges for carriage by the value of the goods, or to agree with the shipper upon the valuation of the property carried. It has been the uniform practice of transportation companies in this country to make their charges dependent upon the value of the property carried, and the propriety of this practice, and the legality of contracts signed by shippers agreeing to the valuation of the property, were distinctly upheld by the Supreme Court of the United States in *Hart vs. Penn. R. Co.*, 112 U. S. 331. * * *

The Supreme Court of Mass. was also called upon to construe this

same provision of the Hepburn act in *Bernard vs. Adams Express Co.* 205 Mass. 254.

The facts of this case were very similar to those of the New York case above referred to. The court held that a contract limiting liability to the value stated by the shipper was not forbidden by the provision of the Carmack amendment to the Hepburn act and in so holding the court said, 28 L. R. A. 297.

"But such a contract as we are considering in this case is not an exemption from liability for negligence in the management of property, within the meaning of the statute. It is a contract as to what the property is, in reference to its value. The purpose of it is not to change the nature of the undertaking of the common carrier, or limit his obligation in the care and management of that which is intrusted to him. It is to describe and define the subject-matter of the contract, so far as the parties care to define it, for the purpose of showing of what value that is which comes into the carrier's possession, and for which he must account in the performance of his duty as a carrier. It is not in any proper sense a contract exempting him from liability for the loss, damage or injury to the property, as the shipper describes it in stating its value for the purpose of determining for what the carrier shall be accountable upon his undertaking, and what price the shipper shall pay for the service and for the risk of loss which the carrier assumes."

It will be noted that the decisions above quoted from were rendered previous to the enactment of the so-called Cummins amendment. This amendment expressly confers, upon carriers, the authority to require shippers to specifically state in writing the value of the goods shipped and limits the liability for damages to the amount stated. I apprehend that this language was incorporated in the amendment because of the fact that considerable doubt exists as to how the Supreme Court of the United States would construe expressions of this nature in the light of the Carmack amendment, and so congress by express provision placed the matter beyond the possibility of a doubt.

While we have no statute in Michigan similar to the Cummins amendment and consequently have no express indication of legislative intent to govern us with respect to intra state shipments, we are impressed with the reasoning of the Court of Appeals of New York and the Supreme Court of Mass. in the cases above cited and consequently are of the opinion that it is within the power of carriers to enforce a rule of this kind, and consequently that Official Classification No. 43, is so far as the same pertains to the shipment of household goods and emigrant moveables, respecting which you requested information, is not in violation of the statutory provision of this state.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-k-O

FIRE ESCAPES. The so-called Fire Marshal Law does not repeal Section 13 of Act 285 of the Public Acts of 1909 as amended relative to inspection of school houses and the ordering of necessary fire escapes thereon.

March 14, 1916.

Hon. James F. Cunningham, Commissioner of Labor, Lansing, Michigan :

Dear Sir—We are in receipt of your favor of the 9th inst. wherein you call attention to Section 13 of Act 285 of the Public Acts of 1909 as amended, wherein it is provided that "factory inspectors shall have power to condemn school houses, if in their opinion they are unsafe and liable to collapse and cause the lives of children to be endangered; also factory inspectors shall have power to order fire escapes on all manufacturing establishments, hotels, stores, theatres, schools * *"

You also call attention to the section of the State Fire Marshal's law wherein it is provided that the state fire marshal shall have power to order fire escapes on any building or structure. You request our opinion as to whether the so-called fire marshal law repeals that part of the Labor Law pertaining to fire escapes on school houses. In reply you are advised that in our opinion the enactment empowering the fire marshal to order fire escapes on buildigs and structures does not repeal the statute that confers like authority upon state factory inspectors. Rather the matter of inspection and correction of existing defects has been extended so that it is now within the authority of either state factory inspectors or the state fire marshal.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-k-O

ELECTION LAW. Provisions of General Law as to notice govern where Local Act is submitted to a referendum vote at a special election.

March 15, 1916.

Mr. Herbert C. Hall, Prosecuting Attorney, Ionia, Michigan :

Dear Sir—Act 317 of the Local Acts of 1915 provides for the repeal of a previous local Act of 1905 relative to the establishment of drains in Ionia County. In accordance with Section 30 of Article V of the State Constitution the measure of 1915 provides for the submission thereof to a vote of the electors of Ionia County at the election to be held on the first Monday of April next. No provision is made with reference to the giving of notice of the election and you state in your letter of the 14th inst., that some question has arisen upon this proposition.

Inasmuch as no general election is to be held on the first Monday of April of this year the legislative provision that the Acts shall be submitted at such time must be regarded as equivalent to a requirement that a special election shall be held on that day at which the electors

of Ionia County shall be given an opportunity to decide whether or not the repealing Act of 1915 shall be adopted. Under this view it would seem to follow that the provisions of the general election law with reference to the giving of notice in such cases should be observed. The fact that the Legislature saw fit to incorporate in the Act itself no provision with respect to the matter of notice of the election must undoubtedly be taken to mean that it was the intention that the provisions of the general election law should govern.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

HIGHWAY LAW. A determination of the State Highway Commissioner under section 9 of the trunk line highway act may not subsequently be altered.

March 15, 1916.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Mich.:

Dear Sir—Act 334 of the Public Acts of 1913 provides for the establishment and maintenance of certain so-called State reward trunk line highways. The measure itself outlines the general course of the main lines of road so established. Among others, it is provided that one route shall begin at the corporation line of the City of Detroit and pass in a northwesterly direction through Pontiac, Holly and other cities of the State. Section 9 directs that the State Highway Commissioner shall “cause preliminary surveys to be made and establish the routes of the several divisions of the State trunk line highway herein provided for.” Pursuant to the provision of the last cited section, it appears that on the 30th of July, 1913, you made a determination of the route of the above mentioned division within the County of Oakland. Pursuant to this determination maps have been prepared showing the precise location of such trunk line highway and the board of supervisors of Oakland County have adopted a resolution submitting to the electors the question of bonding said county in the sum of one million dollars for the purpose of raising money to make the contemplated improvements, in which resolution specific reference is made to the maps on file in the office of the county clerk. The proposed form of ballot to be used contains the same reference. Certain residents of Oakland County now seek to have the route as established by your determination altered in accordance with a proposed plan, the justification being the claim that the public will be thereby better served. The question therefore arises as to your authority, either acting alone or in conjunction with the board of county road commissioners to make the alteration that is asked for under the circumstances suggested.

It appears from your letter that the portion of said trunk line highway that will be affected by the change, if made, has been surveyed in preparation for its permanent improvement and plans for actual construction work have been prepared by your department at a cost of approximately \$50.00 per mile. Said work was undoubtedly done and

the expenditures referred to were made on the assumption that the route as established by your order of July, 1913, would remain unchanged and would be the actual route to be improved in accordance with the act of the legislature.

The evident intention of the legislature in the enactment of section 9, above referred to, was that the State Highway Commissioner should investigate the particular routes that might be followed in establishing trunk line highways through the various municipalities so traversed and should determine from the facts before him, with the assistance of preliminary surveys if desired, the most feasible route in each instance. The question with which we are now confronted is, in substance, whether or not such a determination made in the manner contemplated by the statute may be altered at any subsequent time, notwithstanding that expense may have been incurred in connection with the improvement of the route. Stated somewhat differently: Does the State Highway Commissioner by making a formal determination as to the particular route to be followed by a trunk line highway thereby exhaust his authority with reference thereto so that a subsequent alteration or re-determination may not be had?

I am constrained to the opinion that the question as thus stated must be answered in the affirmative. It seems to me that obvious rules of public policy require that a matter of this nature when once determined in accordance with law shall not be subject to consequent alteration. It is obvious that a contrary view might lead to confusion and uncertainty that should be avoided. If the State Highway Commissioner may be deemed to have the authority to make such a change, then undoubtedly he might exercise such power in a particular case regardless of the fact that expense had been incurred in connection with the route as first established by him; and the doing of actual construction work on such route would not alter the situation. The expenditure of funds under the act would thus be permitted in a way clearly not contemplated thereby. It would seem, therefore, that the intention of the legislature was that the determination of the State Highway Commissioner when once made should be final. Quite possibly had it been intended that a change might be made at a subsequent time, some specific provision would have been incorporated in the act indicating the procedure to be observed and the condition that must obtain.

In recognition of the rule above suggested it has been held repeatedly by the courts in different states that an act of this nature when once performed may not subsequently be changed at pleasure by the officer or board concerned. Thus in the early case of *Jermaine v. Waggoner*, 1 Hill 279, the statute in question authorized the construction of a certain canal and provided for commissioners to superintend the work. Said officers were authorized to cause surveys to be made and to adopt a plan for the construction of the work preliminary to the actual commencement thereof. The authority thus granted was exercised. Subsequently, it was deemed necessary by the commissioners that an alteration be made. As a result of the change, the property of the plaintiff in the case was damaged and he brought his action on the theory that the canal commissioners had exceeded their authority in changing the original plans. In sustaining the right of action the court said in part:

"The statute expressly directed them to procure and adopt a plan. It had reference not only to the expense of the work but to the manner in which the flow of the water might be modified, The height in which the water was to be raised, and the manner in which it was to be regulated was a most material object of inquiry in fixing on a plan, and any departure from it even in the structure of the State dam, injuriously affecting the citizen, would form a ground for recovery of damages. *The commissioners having once passed upon the question their powers were all at an end.*"

It was further declared that the power under which the canal commissioners acted might be compared with that of commissioners of highways and similar officers. Likewise in *People v. Ames*, 19 How. Pr. 551, the board of supervisors was given power by statute to limit the number of the superintendents of the poor to one. The power so given was exercised in a particular instance, but the following year an attempt was made to reconsider the action and restore the number as previously fixed. It was declared by the court that "where the board has passed a resolution to reduce the number, their power over the subject is wholly at an end." In the later case of *People v. Board of Supervisors*, 35 Barber (N. Y.) 408, the Supreme Court of New York decided that the board of supervisors having once apportioned a tax among the various towns of the county in accordance with the statute could not reconsider and by subsequent resolution make another and different apportionment. It was pointed out by the court that

"There must be a point at which to stop. If it can be reviewed the next day, it can the next week, month or year."

Emphasis was also laid upon the fact that the statute did not confer upon the board specific authority to review or vacate their own action in the premises. It occurs to me that the basic principles underlying these decisions must be regarded as controlling in the instant matter. As before suggested, it is in the interests of public policy that a determination as to a specific route, when once made, shall not be subject to alteration at will. Whether we regard the authority to make the determination as semi-judicial or quasi-judicial, or as purely administrative, it occurs to me that the same conclusion must be reached. This view renders it unnecessary to consider the possible bearing on the case of the resolution of the board of supervisors of Oakland County. It may be said, however, that the situation that we are confronted with emphasizes the rule of public policy above referred to as controlling. In accordance with these views, you are advised that it is my opinion that the alteration in question may not be made.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

TOWNSHIP OFFICERS—COMPENSATION. Certain features of Act 248 of 1915 discussed.

March 15, 1916.

Mr. John W. Sims, Branch, Michigan:

Dear Sir— I am in receipt of your letter of March 11th asking for a construction of certain features of Act 248 of the Public Acts of 1915, this relative to compensation of township officers. You ask if this law is subject to approval of the township and "can an officer collect the above amount (\$3.00 per day and same for parts of days for labor performed during present terms of office)?"

Replying to your first inquiry will say that the above Act is a general Act applicable alike to all the townships of the State, making no provision for adoption by the individual township.

In answer to your second inquiry will say that it has heretofore been held by this Department that the constitutional prohibition, namely: Section 3 of Article XVI of the Constitution of 1909, which provides: "That salaries of public officers shall not be increased nor shall the salary of any public officer be decreased after election or appointment" does not apply to officers who work on a per diem basis and who do not receive an annual salary.

I am therefore of the opinion that under the Act referred to the officers of the Township mentioned in the Act are entitled to receive \$3.00 per day and at the same rate for parts of days for work actually and necessarily performed in the discharge of their official duties. In this connection I would say that this Department has construed the word "day" to mean a solar day of twenty-four hours and not the ordinary working day.

Trusting this may be of assistance to you, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Mo-pi-O

LEGISLATURE—MEMBER OF. Not eligible to appointment as Deputy Sheriff.

March 17, 1916.

Hon. William R. Ormsbee, 711 E Second Street, Flint, Michigan:

Dear Sir—Your communication of the 6th inst., received in which you request an opinion as to whether a member of the Legislature can, during his term of office, hold the office of Deputy Sheriff of his county.

In reply thereto your attention is called to Sections 6 and 7 of Article V of the Constitution, which provide as follows:

"No person holding any office under the United States or this State or any county office, except notaries public, officers of the militia and officers elected by townships, shall be eligible to or have a seat in either house of the legislature; and all votes given for any such person shall be void.

No person elected a member of the legislature shall receive any civil appointment within this state or to the senate of the United States from the governor, except notaries public, or from the governor or senate, from the legislature, or any other state authority, during the term for which he is elected. All such appointments and all votes given for any person so elected for any such office or appointment shall be void. No member of the legislature shall be interested directly or indirectly in any contract with the state or any county thereof, authorized by any law passed during the time for which he is elected, nor for one year thereafter."

Your attention is also called to Sections 3 and 5 of Article VIII, which reads as follows:

"Sec. 3. There shall be elected biennially in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be prescribed by law. The Board of Supervisors in any county may unite the offices of county clerk and register of deeds in one office or separate the same at pleasure.

Sec. 5. The sheriff shall hold no other office, and shall be incapable of holding the office of sheriff longer than four in any period of six years. He may be required by law to renew his security from time to time, and, in default of giving such security, his office shall be deemed vacant. The county shall never be responsible for his acts."

The duties of a Sheriff of a county are prescribed by sections 2577 to 2597 of the Compiled Laws of 1897 and other specific duties are also devolved upon the Sheriff and his Deputies in numerous other laws. Section 2579 provides as follows:

"Each sheriff may appoint one or more deputies, for whose official acts he shall be in all respects responsible, and may revoke such appointments at his pleasure; and persons may also be deputed by any sheriff by an instrument in writing, to do particular acts."

By section 2595 C. L. 1897 Deputy Sheriffs are authorized to serve and execute process, civil or criminal, and to have all the powers and duties of Constables.

Without undertaking to enumerate the various duties to be performed by Sheriffs and their Deputies, it is sufficient to say that they are important agencies of the State in the conservation of peace, execution of process of the courts, in the custody of prisoners and in all other matters pertaining to the duties of their offices.

As said above, the Sheriff is a constitutional officer and while elected by local vote, he derives his authority from the Constitution and the Laws of the State. The Deputy Sheriff receives his appointment from the Sheriff, but his authority is derived from the Laws of the State.

Section 7 of Article V. of the Constitution, above quoted, prohibits

members of the Legislature from receiving any civil appointment within the State from any State authority.

Under the decision of the Supreme Court, in the case of Attorney General vs. Detroit Common Council, 112 Mich. pages 145 to 174, I am of the opinion that the office of Deputy Sheriff is derived from State authority and must be so construed with reference to Section 7 of Article V. of the Constitution, and it is therefore my opinion that a member of the Legislature is not eligible to hold the office of Deputy Sheriff.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

ELECTION. Qualifications of voters at.

March 18, 1916.

Mr. E. H. Gould, White Pine Mine, Michigan:

Dear Sir—I am in receipt of yours of the 13th instant requesting information as to whether men who are residents of the adjacent township of Ontonagon are eligible to cast their votes in your township. In reply you are advised that a person can have only one residence for the purpose of voting and if the parties in question are at the time of the election residents of the township of Ontonagon, they can vote in no other place. The question of residence is largely a question of intent to be governed by all of the surrounding circumstances but as before stated no person not a resident of your township is entitled to vote at an election held in your township.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

VILLAGES. Method of vacating incorporations.

March 20, 1916.

Mr. Frank Leach, South Boardman, Michigan:

Dear Sir—We are in receipt of yours of the 10th inst. requesting information as to the method of vacating village incorporation.

In reply you are advised that Section 17 of Chapter XIV. of Act No. 3 of the Public Acts of 1895, as amended, provides that:

“Whenever the qualified electors of any incorporated villages shall desire to vacate the incorporation of the same, the board of trustees or common council of such village, upon a petition being presented to it at any regular or special meeting, signed by at least one-fourth of the legal voters of such village as shown by the registration list of the last preceding registration held in said village, praying that the incorporation of such village may be vacated, shall, immediately thereupon, order a special meeting of the electors of such village to be held for the purpose of voting

upon the question of vacating the incorporation of the same, and shall give twenty days' notice of the time and place of holding such meeting by posting up written or printed notices which shall state the object of such meeting by reciting the substance of such petition, in six of the most public places within the limits of such village."

Section 18 of the same Act provides for the method of voting with reference to the same, and Section 19 provides as follows:

"Upon receiving the transcript of the proceedings in submitting to a vote of the electors the question of vacating the incorporation of any village, properly certified to as provided in the preceding section, the county clerk shall lay the same before the board of supervisors of the county at its next regular annual meeting, and it shall thereupon be the duty of the board of supervisors to pass a resolution vacating the incorporation of such village."

Trusting that this is the information desired, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-pi-O

ELECTION LAW. The voters of a township either at the annual meeting or any special election have no authority to require that all cattle in the township shall be tuberculin tested as this comes within the jurisdiction of the Live Stock Sanitary Commission.

March 20, 1916.

Hon. H. H. Halladay, President State Live Stock Sanitary Commission,
Lansing, Mich.:

Dear Sir—You have again submitted to this department a communication from Miller, Tracy & Eldredge, Attorneys at Law, Marquette, to which they request a re-consideration of the opinion heretofore rendered by this department upon the question of whether or not townships have the right to require by vote that all cattle in the township shall be tuberculin tested. They refer us to Section 2271 of the Compiled Laws of 1897 in which they infer that the provisions of this statute may be broad enough to include authority to require tuberculin test for cattle. This section reads as follows:

"The inhabitants of each township may, at any legal meeting, by a vote of the qualified electors thereof, make all such orders and by-laws for determining the time and manner in which cattle, horses, swine, sheep, and other animals shall be restrained from going at large in the highways, and for directing and managing the prudential affairs of the township, as they shall judge most conducive to the peace, welfare and good order thereof."

Replying to your communication would say that while it is true the municipality may adopt such by-laws as may be consistent with its own powers, yet it must be borne in mind that the by-laws so adopted must be consistent with the laws of the state which gave it life. The section to which our attention is directed provides that the inhabitants of the township may at any legal meeting by vote adopt by-laws * * * * for directing and managing the prudential affairs of the township, and this section, it is insisted, is broad enough to cover the question under consideration. It will be immediately ascertained by reference to Words & Phrases that prudential affairs of a township are not those affairs which are controlled by direct legislative enactment. While this phrase is somewhat broad and sweeping in its construction yet I think it has a well defined meaning. Powers of a municipality cannot be so enlarged as to conflict with or over ride general laws. It was said in an early Michigan case, *Commissioners of Highway vs. Martin*, 4 Mich., 560 that

“Towns with us are mere political organizations, created wholly by statute for certain purposes of local government. They are vested with no franchises or special privileges for their own benefit. They have only such powers as the statute confers, and are subject to no obligations except such as are derived from statutory provisions.”

The statute gives to townships the right to adopt certain by-laws but the power is limited in various ways.

1st. It is controlled by the Constitution of the United States and of the State. The restrictions imposed by those instruments, which directly limit the legislative power of the State, rest equally upon all the instruments of government created by the State. If a State cannot pass an ex post facto law, or law impairing the obligation of contracts, neither can any agency do so which acts under the state with delegated authority. By-laws, therefore, which in their operation would be ex post facto, or violate contracts, are not within the power of municipal corporations; and whatever the people by the State constitution have prohibited the State government from doing, it cannot do indirectly through the local governments.

2nd. Municipal by-laws must also be in harmony with the general laws of the state and with the provisions of the municipal charter. Whenever they come in conflict with either the by-law must give way.

3rd. Municipal by-laws must also be reasonable. Whenever they appear not to be so, the Court, must, as a matter of law declare them void. To render them reasonable, they should in some degree conform to the accomplishment for which the corporation was created, and its powers conferred.

Cooley Con. Lim. 7th Ed. 278.

As indicated in the opinion heretofore rendered, Act 182 of the Public Acts of 1885, as later amended, ceating the Live Stock Sanitary Commission, gives to the Commission the power and makes it its duty to protect the health of domestic animals of the State from all contagious and infectious diseases of a maligant character. Section 5 of said act,

being section 3631 of the Compiled Laws of 1897, makes it the duty of any person who discovers, suspects or has reason to believe that any domestic animal belonging to him or in his charge, or that may come under his observation belonging to other parties, is infected with any disease whether contagious or infectious to immediately report such fact, belief or suspicion to the Live Stock Sanitary Commission, or to the local board of health. It appears to me that the duty is clear and directory, individual and not municipal.

This is a power, general in its nature, applying alike to all persons and municipalities. If it could be said that a township had the right to require by vote that all cattle within the township should be tuberculin tested, it is difficult to imagine what lengths townships could go in matters of this kind. It could easily go a step farther and forbid the importation of any or all cattle coming from another municipality, or could make such regulations concerning sanitary conditions of the municipality as would completely take away the police power of the State in which this power is vested. It was said in the case of *Shipman vs. Live Stock Commission*, 115 Mich. 491 that the commission is the sole tribunal to determine whether the animals are diseased and to ascertain the value, and is to be governed by the value at the date of appraisal. This matter could be determined upon the right of a municipality to interfere with the police power of the state, but it is sufficient to hold that a municipality cannot in the absence of statutory permission, vote to require certain measures to be taken when the Legislature has created a commission for the enforcement of those measures and where the manner of enforcement is positive and directory.

I am, therefore, constrained to the views presented in my former opinion that the voters of a township have no authority to require either at an annual or special meeting that all cattle in the township should be tuberculin tested, and further that section 2271 of the Compiled Laws of 1897 referred to, has no application whatever to matters of this nature. I am herewith returning correspondence to you.

Trusting that this will give you my views on the matter I am,

Yours very respectfully,

GRANT FELLOWS,

Attorney General.

Mo-k-O

ELECTIONS. Delegates to the Spring County Conventions must be chosen by caucus.

March 20, 1916.

Hon. James W. Marsh, Mayor, Battle Creek, Michigan:

Dear Sir—We are in receipt of yours of the 10th inst. wherein you state:

“There seems to be some misunderstanding in reference to the coming State Conventions of the two leading parties. It is the impression of some people that we should elect delegates to our County Conventions which will elect Delegates to the State Convention at the Presidential primary to be held on April 3rd.

Kindly advise me if this is the case and if not state whether the Delegates to our County Convention should be elected in the old form, by caucus."

In reply there is no statutory provision whereby delegates to the County Convention which will be held for the purpose of electing delegates to the State Convention, held for the purpose of choosing delegates to the National Convention, may be selected by a primary. Section 18 of Act 281 of the Public Acts of 1909, as last amended by Act 118 of the Public Acts of 1913, provides for the election of delegates from townships, wards or precincts to the County Convention but makes such provision only for the August primary. Consequently, this provision would not be effective for the purpose of choosing delegates for the County Conventions referred to, and the only way that such delegates may be chosen is by the holding of party caucuses.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

LIQUOR LAW. Number of licenses to be granted in any township depends on population according to Federal census.

March 20, 1916.

Mr. Joel Smith, Supervisor, Moran, Michigan :

Dear Sir—Your inquiry of the 14th instant with reference to the number of saloons that may legally be licensed in your township is at hand. It appears there is at the present time one license outstanding and in force. The population of the township, as shown by the federal census of 1910 is approximately 700. You have asked my advice as to whether a second license may be granted by the township board under the circumstances.

Section 39 of the general liquor law of the State, as amended by the so-called Warner-Cramton Act of 1909, fixes the number of licenses that may be issued in any township at not more than one license for each five hundred inhabitants according to the last United States census. According to this ratio any township that has less than one thousand inhabitants according to the federal census of 1910 is entitled to license but one saloon. I infer from your statement that if there were more than one saloon in operation at the time that the Act of 1909 went into effect, the additional licenses have from time to time been surrendered so that the number has been reduced by operation of law to the ratio fixed by the act. Such being the case, the number may not now be increased. As before suggested, the specific terms of the statute make the population as shown by the last Federal census controlling in the matter. Under decisions of the Supreme Court of this State, a license in excess of the number that may be legally issued constitutes no protection whatever to any retail dealer who attempts to operate a saloon under the same; and a criminal prosecution might be brought against anyone attempting so to do. It is also settled that injunction proceedings may be brought in such a case to prevent the illegal action. It follows, therefore, that a

township board in granting licenses to retail liquor dealers should carefully observe the limitations of the law.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAYS. Under Act 59 of the Public Acts of 1915, a street railway occupying a public highway cannot be assessed for special benefits for the construction of a culvert.

March 21, 1916.

Mr. Robert H. Kirschman, Prosecuting Attorney, Battle Creek, Mich.:

Dear Sir—Your communication of the 20th instant received as follows:

"A concrete road is being constructed west of the City of Battle Creek, under and by virtue of Act 59 of the Session Laws of 1915. The Michigan United Traction Company has its track in the highway on one side of the traveled portion of the road. At one point on this road is a culvert which must be reconstructed, and because of the occupancy of said electric line the length of the culvert must be increased by several feet.

Under such circumstances can the good roads commissioners levy and collect a tax from said electric railroad company because of the increased expenses made necessary by the occupancy of the road by said electric line?"

In reply would say that Act 59 of the Public Acts of 1915 was designed to provide an additional method for constructing and improving public highways where a portion of the cost of construction is paid by special assessments upon lands benefited thereby. The machinery of the act is set in motion by the owners of a majority of the frontage of lands "fronting upon any highway or portion of the highway, nor less than two miles in length, filing an application to the county road commissioners requesting the desired improvement." (Section 4.) Upon the filing of such application the county road commissioners then proceed to examine the proposed improvements and a survey, etc., is made. Without enumerating the various steps that are to be taken, it is sufficient to state that under section 17, the county road commissioners are required to apportion the per cent of the total cost of construction which the county at large shall be liable to pay, and also to apportion the per cent of the cost to particular townships. They are also required to apportion the per cent of benefits to accrue to any piece of land. This is somewhat similar to the provisions of the drain law. The act itself does not lay down any formula by which benefits to particular lands are to be determined, but it has provided for an appeal from the apportionment of the per cent of benefits. Under section 8, all bridges, road drains and culverts shall be deemed a necessary part of any proposed improvements and the cost and expense thereof shall be included in the special assessment rolls for such improvement.

There is nothing in the act so far as I can discover suggesting the division of the cost of a bridge or a culvert as distinguished from the entire section of the road to be improved. The inference is rather that

the cost of construction of bridges and culverts should be considered a part of the general improvements. I do not believe, therefore, that the county road commission would be authorized to divide the cost of the culvert so as to place a portion of the burden upon the occupant of the highway, in this case the street railway company.

This is aside from the question as to whether a railroad company occupying the highway with its tracks could in any event be deemed an owner "fronting upon the highway." Inasmuch as the proceedings under discussion arise solely under Act 59, I am of the opinion that your question should be answered in the negative.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-v-O

ELECTION LAW. POLITICAL COMMITTEES. Congressional district committees, how elected under primary law.

March 21, 1916.

Hon. Dennis E. Alward, State Capitol, Lansing:

Dear Sir—You have made an oral request for an opinion as to the proper construction to be placed on section 41 of the general primary law with reference to the composition of a congressional district political committee where the district is composed of more than one county. You state that in some of the congressional districts no recent action has been taken for the appointment of congressional district committees and that so far as you are aware there are no such committees in some of the districts so that the State Central Committee of the Republican party is at a loss to know to whom the notices should be sent of the call for the spring convention for the nomination of district delegates to the National Convention. You call attention to section 41 of the general primary law but have some doubt that the provisions made therein for district committees were applicable.

Section 41, to which you refer, provides for the naming of a candidate by the proper party committee in any case where the candidate nominated at the primaries shall die or withdraw before the printing of the ballots; "and for this purpose" the section proceeds to state who the proper party committee shall be and provides for such party committee, in the representative, senatorial and congressional and judicial districts, and whether the same may be equal to, more than, or less than, a single county. In all cases the county committee is made the basis of the district committee. It was your idea that the district committees authorized in section 41 would be limited in their functions to the selection of a candidate to succeed a primary nominee who should die or withdraw, and that therefore committees named in section 41 would have no authority to issue a district convention call nor to arrange for caucuses by which the delegates would be selected.

The primary law provides for county committees as follows:

"Sec. 42. The county committee, except chairman and secretary, shall be chosen by each political party at each county convention held for each August convention."

The county committees referred to in section 41 are those provided for in section 42.

Since the adoption of the direct primary system, considerable confusion has resulted as to the manner of electing political committees for districts other than counties. In some instances district committees have been maintained and in other instances no committees have been elected for some time. In some instances I am informed the district committees are composed as provided for in section 41, and in other instances district conventions have been held and committees elected under convention rules.

With regard to your specific question, I am of the opinion that while the main purpose of section 41 is to provide a certain and definite method of naming a candidate to succeed one who has withdrawn or died before ballots are printed, yet it is not the intention of this section to limit the committees therein provided for in their functions to that single purpose, and that in the absence of a district committee being chosen or elected in some other way, a committee once organized under section 41 would thereafter constitute the district committee for all other purposes. I do not wish to be understood as saying in this opinion that if a district committee has been elected by some other manner it could not act, but in the absence of a committee being elected under convention rules section 41 would be applicable.

Very respectfully,
GRANT FELLOWS,
Attorney General.

P-v-O

SCHOOL LAW. Registration not necessary in school district subject to special act unless required by the terms thereof.

March 21, 1916.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing,
Michigan:

Dear Sir—Your request for an opinion as to whether or not it will be necessary that qualified voters of the school district of the City of Lansing must register in order to vote for members of the board of education at the spring election is at hand. It appears that said school district is governed by the provisions of a local act enacted in 1893; said measure, however, makes specific reference, in a chapter thereof dealing with schools, and the general school law of the State, adopting the provisions thereof except as otherwise indicated. There is no provision of the local act to which my attention is called that requires registration as prerequisite to voting at any school election. Insofar as the selection of members of the board of education is concerned, the election, as I view it, must be regarded as a "school election" to all intents and purposes. Neither is there any provision of the general school law that contemplates that voters shall be registered before participating in such an election. It is my opinion, therefore, that your question should be answered in the negative, assuming that the local act referred to has never been amended so as to impair the act suggested.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

SCHOOL LAW. Board of education has power to vote money to install a heating plant.

March 21, 1916.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing, Michigan:

Dear Sir—I note from your letter of the 20th instant that a certain school district of the State which is subject to the provisions of the general school law has bonded in accordance with Chapter VI thereof for the purpose of building and furnishing a school house. It appears, however, that the actual construction of the building took all of the money so raised, leaving nothing with which to install a heating plant. The question now arises as to the authority of the school board to vote a tax in order to raise money to pay for such plant.

Section 9 of Chapter III of the general school law confers upon the board authority to vote necessary taxes for certain specific purposes. It is specifically declared that such purposes "shall include school furnishings and all appurtenances." The obvious purpose of this section was to insure that the maintenance of a school in any district subject to the general law should not be prevented because of the lack of funds to meet so-called "running expenses." The word "appurtenances" used in its ordinary significance would clearly seem to be broad enough in its scope to include the heating plant. In other words, I think that a heating plant, at least one of ordinary construction is properly to be regarded as an appurtenance rather than as a part of the building itself to be constructed as such out of money raised for erecting the school house. It necessarily follows that the school board must be deemed to have the power to vote the necessary money for the installation of a suitable heating plant in the instance that you have stated.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HAWKERS AND PEDDLERS. Townships in the Upper Peninsula may license hawkers and peddlers but cannot discriminate against non-residents of the township by exempting from the requirement of the resolution residents of the township.

March 21, 1916.

Mr. Raymond Turner, Prosecuting Attorney, Norway, Mich.:

Dear Sir—I am in receipt of yours of the 17th instant wherein you state:

"Merchants dealing in meats, groceries and dry goods, etc., having regularly established places of business in the surrounding townships and cities have certain regular customers in 'A' township and send their wagons into 'A' township to deliver goods and at the same time solicit orders to be delivered the following day. The township referred to is in the Upper Peninsula.

1. Are these merchants liable under the State hawkers and peddlers act?

2. Would merchants having their places of business in and residing in 'A' township and doing business in the same manner be liable for the state hawker's license?

3. Has the township board authority to pass a resolution imposing a license fee on these outside merchants doing business in the township as above specified?

4. Could the township board legally pass a resolution imposing a license fee on these merchants from outside the township but exempt its own merchants doing a like business?"

In reply, sections 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134 and 2135 of Howell's Annotated Statutes, second edition, deals generally with the subject matter of the licensing of hawkers and peddlers in the State of Michigan, section 2132 dealing with those exempt from the operation of the act as last amended by Act 225 of the Public Acts of 1907. Under the express provisions of this exemption clause, the merchants referred to in your letter would have the right to carry on the class of business stated providing such merchants had been conducting a regular established mercantile business in any county of the State for a period of at least one year previous. There is some doubt, however, as to the constitutionality of this provision granting an exemption to those having regularly established places of business. In the case of *People v. Stewart*, 167 Mich. 417 the court uses this language:

"In 1897, Act 248 of the Public Acts of that year, was enacted, which was held unconstitutional by this court in *Rogers v. Kent Circuit Judge*, 115 Mich. 441, for the same reason that is urged against the amendment in Act 225 of the Public Acts of 1907, to-wit: that it discriminated against a non-resident of the State. If it is true, as is urged, that Act 225, last above referred to, is unconstitutional for the same reason, then section 5330, 2 Comp. Laws, remains in force."

This might be taken as an indication that the Supreme Court would hold this provision unconstitutional were the same squarely before the court. If this provision were held unconstitutional, then as stated by the court, section 5330 2 Comp. Laws, as amended by Act 120 of the Public Acts of 1905, would be in force. This provision is as follows:

"Nothing contained in this chapter shall be construed to prevent any manufacturer, farmer, mechanic, or nurseryman from selling his work or production by sample or otherwise without a license (nor shall any peddler in meat or fish be prevented by anything herein contained from peddling such meat or fish without a license), nor shall any wholesale merchant be prevented by anything contained, from selling to dealers by sample without license, but no merchant shall be allowed to peddle, or to employ others to peddle goods not his own manufacture, without the license in this chapter provided."

If the act of 1907 is unconstitutional and the provision last above cited

is still in force, then the further question presents itself, are the merchants in question hawkers and peddlers within the meaning of the statute. We seriously doubt that the court would hold these persons hawkers and peddlers. The term hawker or peddler ordinarily is construed to be a person who carries with him from place to place the goods to be sold and is not ordinarily construed to embrace one who carries no goods with him for immediate delivery but takes orders for future delivery. Neither is such person one who "takes orders for the purchase of goods, wares or merchandise by sample lists or catalogs" as described in the act. Considering all of these propositions, together, namely, the express wording of the amendment found in Act 225 of the Public Acts of 1907 and the uncertainty as to how the court would define a hawker and peddler under the original act, we are impressed with the opinion that those merchants carrying on a business in the manner described in your communication are not required to take out a license under the provisions of the State hawkers and peddlers act. This disposes of questions one and two submitted by you.

In answer to questions three and four, section 1 of Act 204 of the Public Acts of 1889, as amended, the same being section 2136 of Howell's Annotated Statutes, second edition, provides as follows:

"That the township board of any township in the upper peninsula of Michigan may, at any meeting, regular or special, license hawkers, peddlers, and pawnbrokers, and hawking and peddling, and may regulate and license the sale or peddling of goods, wares, merchandise, refreshments, or any kind of property or thing, by persons going about from place to place in the townships for that purpose, or from any stand, cart, vehicle or other device, in the streets, highways, or in or upon the wharves, docks, open places or spaces, public grounds or public buildings in the township: Provided, That in no case such license shall exceed the sum of one hundred dollars for peddling in such township."

As will be noted from an examination of this section, authority is conferred upon township boards of townships in the Upper Peninsula to license hawkers and peddlers and to regulate and license the sale or peddling of goods, wares, merchandise, etc. There is some doubt in my mind as to whether the terms of this act are applicable to the class of persons mentioned in your communication, but I am inclined to the opinion that under the terms of this act, such persons may be licensed and regulated and that the same might, as provided by section 2, the same being compiler's section 2137 of Howell's Annotated Statutes, second edition, be done by resolution of the township board. I am not of the opinion, however, that a resolution imposing a license fee upon non-residents of the township and exempting from its operation those who reside in the township would be valid and my opinion in this respect is based upon two propositions, namely, that the requiring of a license from non-residents generally, while exempting residents, would be a discrimination between residents of this State and residents of other states, and hence violative of the Federal Constitution. If the federal question were eliminated, I think the courts would still hold the regulation invalid as discriminatory between residents of different localities. In the case of *Village of Braceville v. Dougherty*, 30 Ill. App. 645, the Supreme Court

of Illinois was called upon to pass upon the validity of an ordinance requiring a license fee from non-resident peddlers only. The court held the ordinance invalid as discriminatory.

For the reasons cited, I would answer question number four negatively. Trusting that this sufficiently answers the inquiries, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Cr-v-O

CEMETERIES—EMPLOYMENT OF A SEXTON. Act 113 P. A. 1915 has no reference to the employment of a sexton.

March 22, 1916.

Mr. Frank S. Cummings, Register of Deeds, Centreville, Michigan :

Dear Sir—Your communication of the 16th inst. received and contents noted.

In reply thereto would say that your inquiry did not reach this Department in time for an opinion for the 21st inst.

An examination of Act 113 of the Public Acts of 1915 with reference to the care of township cemeteries discloses that it conflicts to some extent with sections 4414 and 4415 of the Compiled Laws of 1897. In the older law, above referred to, the care of cemeteries is left to the Board of Health of the Township. There is no specific provision for hiring a sexton. I am inclined to think, however, that the Act of 1915 has no reference to the employment of a sexton, and that if it was legal to employ one under the older law it would still be legal to do so. As to the legality of such employment, however, I would not care to pass upon the question inasmuch as it is purely local in character. I do not find that the Supreme Court has ever been called upon to decide this point.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

P-pi-O

TOWNSHIP LAW. When propositions may be voted by precincts on township meeting day.

March 29, 1916.

Hon. Andrew F. Anderson, Omena, Michigan :

Dear Sir—Your communication of the 22nd instant received in regard to the holding of township elections by precincts. In reply thereto would say that the division of townships into election districts and the conduct of township elections by election districts are governed by Chapter 95 of the Compiled Laws of 1897, as amended by Act 13 of the Public Acts of 1911 and Act 204 of the Public Acts of 1911. I call your attention to section 3589 of the Compiled Laws of 1897 (section 8 of Chapter 95) which provides as follows:

“The electors of each election district shall meet at one o'clock in the afternoon at the polling place of each district respectively

to transact such business as is usually transacted at township meetings by viva voce vote, and shall count or canvass the votes on each and every question which shall be submitted to them and the result of such vote shall be counted and reported to the board of inspectors of election of precinct number one, and shall be by them consolidated and canvassed in the same manner as provided by section seven of said act: Provided, That all questions proposed to be acted upon shall be previously reported to the township board and by them reported to the board of inspectors of election of each precinct on the morning of election, and that no question shall be entertained that is not so reported."

You will note therein the proviso "that all questions proposed to be acted upon shall be previously reported to the township board and by them reported to the board of inspectors of election of each precinct on the morning of election and that no question shall be entertained that is not so reported."

Aside from the provision made therein, as above quoted, there is no reason why money for township purposes cannot be voted at the precinct meetings under the law as it now stands. The law does not appear to authorize telephone communications and I do not think action taken at the different precinct meetings based upon telephone messages will be a compliance with the provision of section 3589 that the township board must report each question to the board of inspectors of each precinct on the morning of election.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-v-O

HIGHWAY LAW. BONDS. As between Act 397 of 1913 and Act 373 of 1913 the latter should be regarded as controlling in the issuance of bonds thereunder pursuant to the highway law.

March 29, 1916.

Mr. John S. Prescott, Attorney at Law, Battle Creek, Mich.:

Dear Sir—Your letter of the 22nd instant is at hand and contents thereof noted. You have referred to Acts 397 and 373 of 1913. The former measure is an amendment to the general act, as first passed in 1851, relating to the powers and duties of boards of supervisors. Section 11 of said act is amended by the enactment of 1913 and in its present form authorizes the board of supervisors to empower townships to raise money by taxation or by borrowing for the building or repairing of roads or bridges subject to the condition that when it is so borrowed, it must be repaid within fifteen years. Act 373 of the same year amends section 1 of Chapter XVI of the general highway law and confers upon the board of supervisors the same authority as is above indicated in practically identical terms, except that the time for the payment of any loan negotiated by the township is fixed at "within twenty years." Both of these acts of 1913 were approved on the same day. Because of the inconsistency the question naturally arises as to which must be regarded as controlling.

It seems to me that the proposition must be regarded as doubtful. Both of these acts are entitled to the same weight; being approved on the same day, neither can be regarded as prior to the other. As a matter of precaution it would seem that any township contracting a loan should observe the shorter period of time prescribed, that is, should issue bonds to run not longer than fifteen years. Undoubtedly Act 407 of 1913 was enacted in order to save any possible question. It is also quite likely that bonding houses might hesitate to accept obligations issued pursuant to authority granted by the board of supervisors if the same run for more than the period fixed by Act 397 of 1913.

As an abstract legal proposition, I am somewhat inclined to the view that the provision of the highway law should be regarded as controlling in any case where the procedure is had thereunder. Stated somewhat differently, we have here two measures each entitled to the same weight and effect, one of which is general, while the other deals with a specific subject, namely, the construction and maintenance of highways. In case of such a variance as is here presented, the legal theory would seem to require that the specific act should govern. I call your attention to the case of Board of Supervisors v. Simmons, 104 Mich. 305, where the act defining the powers and duties of boards of supervisors were involved and where it was declared by the court that its provisions would control "in the absence of other controlling provisions of the act authorizing bonds." This language would seem to imply that if there were such other acts covering the particular purpose for which the obligations were to be issued then the same would be controlling rather than the general law. However, the precise situation that confronts us is apparently without a parallel and can be settled definitely only by a decision of the court.

I regret that your letter was not received in sufficient time to enable us to reply to you yesterday as requested.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. State reward received by township need not be used in payment of bonds authorized and issued since August 14th, 1913.

March 29, 1916.

Mr. Clyde C. Piper, Harrison, Michigan:

Dear Sir—You have recently requested the views of this Department in answer to the following inquiry: "Can the money derived from State trunk line highway be used for any purpose other than a sinking fund to take up bonds which a township has issued especially for the trunk line road?" I assume that you have reference to money received by the township from the State by way of a reward for the improvement of highway in accordance with the prescribed specifications. Section 11 of Chapter V of the general highway law governs the disposition of money so paid. As amended by Act 355 of 1913 and Act 75 of 1915, such money is credited to the highway improvement fund of the township and may be used generally for any purpose that other moneys in such fund may

be used. Previous to the date that the Act of 1913, above cited, became operative, that is, previous to August 14, 1913, such money could be used only for the payment of the principal on bonds in case such obligations had been issued by the township to raise money to build the road. Accordingly, if the bonds in the instance to which you have reference were authorized and issued since the 14th of August, 1913, the reward received from the State for the highway improved by the money so raised need not be used in paying the obligations. In the case of bonds issued for highway improvement purposes before said date, however, money received from the State by way of reward on the road so improved should be used for their payment.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. Return of county road tax under section 26 of Chapter IV considered.

March 29, 1916.

Mr. Henry Sagers, Supervisor, Holland, Mich.:

Dear Sir—I have before me your letter of the 22nd instant in which you ask to be advised as to the amount for which a township must bond itself for the improvement of highways in order to secure a return of the county road tax paid by such township. This proposition is governed by section 26 of Chapter IV of the general highway law, which reads as follows:

“The adoption of the county road system in any county shall not prohibit any organized township from building state reward roads with moneys raised by tax or by bonding, and in townships where money has been raised by bonding, to build state reward roads, the township clerk shall certify to the board of supervisors at the annual meeting thereof the amount of such bonds remaining unpaid, and the county road tax paid by such township shall be returned to the township each year to be applied in payment of such bonds until they are fully paid: Provided, however, That no township shall be entitled to the return of its county road tax until it shall have paid as much money in county road taxes as may have been expended on county roads within said township by the county road commissioners.”

You will note that the statute contains no provision with reference to the minimum amount of the bonds that must be issued by the township in order that the refund may be claimed. The only conditions expressed are that the township shall have bonded for the purpose of raising money to build State reward roads and that such township shall have paid such amount in county road taxes as shall be equal to or exceed the amount expended within such township on county roads by the road commissioners. It will be noted, however, that when a tax is returned to the township it can be used only in the payment of the bonds. Thus the implied condition is suggested that in no case may a return be

compelled of a greater amount than the aggregate of the outstanding bonds. Clearly, the idea of the legislature was that money turned back to the township by the county should go into a sinking fund for the retirement of the bonds. Whenever, therefore, the amount of such sinking fund equals the obligations it would seem that the county board of supervisors might properly refuse the return of any additional amounts.

You also suggest the question as to whether or not money raised by a township for the improvement of highways in accordance with the section above quoted must be used within any specified time. In the absence of any specific requirement of the statute along this line, it must be considered that it was the intention of the legislature to leave the matter to the discretion of the proper officials. With reference to the return of the county road tax, however, it will be noted from the language of the statute that such right may not be claimed except when the money has been raised by bonding "to build state reward roads." By reference to the provisions of Chapter V of the highway law, it is obvious that improved highway may not properly be regarded as "state reward road" until it has been approved and accepted by the proper officials. When money is voted by a township for such purpose, or when bonds are issued, such action is, of course, expressed to be for the benefit of the highway improvement fund. It can scarcely be said, strictly speaking, that any money in that fund has been raised for the purpose of building State reward roads, necessarily, until after the contemplated improvements have been made and have been favorably passed on. It is, of course, obvious that money may be raised for the improvement fund, may be actually used in the improving of highways within the township, but no state reward may be merited or received. Having in mind the various provisions of the highway law and the obvious purpose of the legislature in the enactment of section 26 of Chapter IV above quoted, I am impressed that no township may claim the return of its county road tax unless and until it actually constructs improved highway that is accepted as State reward road.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

HIGHWAY LAW. An overseer of highways under Chapter 25 receives compensation in accordance with section 43 thereof.

March 29, 1916.

Mr. Theo. Bellville, Township Clerk, Whittemore, Michigan :

Dear Sir—Your inquiry of recent date with reference to the payment of compensation to an overseer in a township that has adopted the so-called labor system as outlined in Chapter XXV of the general highway law, is at hand. Section 43 of said chapter is as follows:

"If any overseer shall be employed more days in executing the several duties enjoined upon him by this act than he is assessed to work on the highways, he shall be paid for the excess at the rate of one dollar fifty cents per day, and be allowed to retain the same out of any moneys that may come into his hands for de-

linquencies or commutations, or shall be paid out of the road and bridge fund in his district."

Other than as found in this section, there is no provision in the chapter providing for the statute labor system relating to the payment of compensation to the overseer. I am impressed, therefore, that such payment may be made only in the manner expressed. That is, if he has a sufficient amount in his hands "for delinquencies or commutations" he may retain the same. Otherwise, he is to be paid out of the road and bridge fund of his district. There is no statutory provision to which my attention is called that limits the number of days for which an overseer may receive compensation under the provisions of Chapter XXV.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

ARCHITECT. An architect who submits a plan without reserving any right or interest therein has no further claim thereto, such plan not being protected by copyright.

March 29, 1916.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing:

Dear Sir—Your communication of the 22nd instant in which reference is made to the rights that architects may have in plans submitted to your Department is at hand. I note that it is your intention to furnish plans and specifications to school boards throughout the State without cost, if such are desired. The precise point at issue is whether or not you will incur any liability if you hire an architect and permit him to make plans, some of which are copies of those on file that have been submitted by other architects. I infer that such procedure is had pursuant to the general purpose suggested by Act 17 of the Public Acts of 1915.

It seems to me that the answer to your inquiry must depend primarily on the understanding or agreement that you have had with the architects by whom the plans have been submitted to you. If it has been mutually understood in such cases that you were to have the privilege of using such plans as you might desire, then it may fairly be said that each architect has parted with whatever right or interest he may have had therein. On the other hand, if a reservation of right has been made by any architect, it must, of course, be observed. I assume that in no case have plans protected by copyright been submitted to you; or at any rate no such plans are involved in your present inquiry.

The general rule above suggested is recognized in 6 Cyc. page 33. In support of the same, the case of *Smithmeyer v. U. S.*, 25 Ct. of Claims, 481 is cited. It was there declared that there is in fact no intrinsic property right in and to an architect's plans. It was also suggested that if the architect "voluntarily makes an unrestricted surrender of them, he loses all right of property in them." The Supreme Court of New York in *Wright v. Eisle*, 86 N. Y. App. Div. 356 reached the same conclusion. Likewise in *Windrim v. Philadelphia*, 9 Phila. 550, it was held that an architect, who had presented plans in competition with others and had received a premium, could not demand the return of the same to him on

the ground that such plans had become the property of the city. I think that there is no question but that these decisions indicate the correct rule of law in general upon the proposition and that in consequence in the absence of some understanding or agreement to the contrary, an architect who has submitted plans to you must be deemed to have done so with the intention of relinquishing any right that he may have had therein. It follows that in such a case you are entitled to use such plans in any way that you deem expedient and proper.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

HIGHWAY LAW. The successor to a County Road Commissioner whose term would, but for Acts 79 and 181 of 1915, extend to the first of May, 1917, should be elected at the November election 1916 and may assume office the first of January following.

March 29, 1916.

Carl R. Henry, Prosecuting Attorney, Alpena, Michigan:

Dear Sir—I note from your letter of the 25th inst., that your county has adopted the provisions of Chapter IV. of the General Highway Law and is now operating under the so-called County Road System in accordance with the provisions of said Chapter. It appears that the Board of County Road Commissioners is composed of three members whose terms of office will expire respectively May 1st, 1917, May 1st, 1919 and May 1st, 1921. Previous to the enactment of Act 181 of the Public Acts of 1915, County Road Commissioners were chosen at the Spring election. Said Act, however, amended Section 6 of Chapter IV. of the Highway Law by providing among other things that: "The regular election of county road commissioners shall be held at the general election on the first Tuesday after the first Monday in November, and the term of office of such county road commissioners shall commence on the first day of January in the year following their election." In view of this amendment the question arises as to when the successor to the County Road Commissioner whose term will expire on the first of May, 1917, should be elected and when such successor may claim the right to assume the office. The election of the successors of the other commissioners will of course be subject to the same considerations.

In view of the provisions of the statute above quoted it is obvious that no election of a road commissioner can be had at any time other than the general November election. Such being the case I am impressed that the successor to your road commissioner whose term will expire in 1917 should be elected at the November election next Fall. I call your attention upon this proposition to the provisions of section 7 of the County Road Act, as amended by Act 75 of the Public Acts of 1915, directing that "the successor to each such commissioner shall be elected on the first Tuesday after the first Monday in November preceding the expiration of his term." I am impressed that we must construe this language as applicable to road commissioners who were in office at

the time the amendment of 1915 became operative. Stated generally, therefore, the successor to any county road commissioner should be chosen at the November election next preceding the expiration of the term as fixed by the statute under which such commissioner was chosen.

This brings us to the question as to when the successor thus elected may claim the right to enter upon the performance of his official duties. It is significant to note that the statute makes no provision whatever for a commissioner who is chosen in accordance therewith to assume office at any time other than on the first of January following. Had it been the intention to make any exception to this rule I think we must assume that specific language would have been used indicating such intention. We must of course construe the Act as we find it, and must judge of the purpose of the law making body by the language used. So viewed the conclusion seems to be unavoidable that in instances similar to the case that you have stated the Legislature has in fact shortened the terms of road commissioners holding office when the amendment of 1915 became operative, notwithstanding that the statute as it stood at the time of their selection in terms granted to them the privilege of holding their offices until the first of May of an odd year. There would seem to be no reasonable doubt as to the power of the legislature to take such action. Attorney General vs. Jochim, 99 Mich. 368; 29 Cyc. 1397. The question must, in other words, be regarded as one of construction and I do not think that any interpretation other than as above suggested can be placed on the language used in sections 6 and 7 of the County Road Act. The tenure of office of each of your County Road Commissioners must be regarded as shortened to the extent suggested by the amendment of 1915, so that the successor of each may claim the right to the office on the first of January following his election.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

MICHIGAN RAILROAD COMMISSION. Petition for separation of grades on the Pere Marquette at Sawyer, discussed.

March 29, 1916.

Michigan Railroad Commission, Lansing, Michigan:
Attention of Mr. Cunningham.

Gentlemen—We are in receipt of yours of the 23d inst., enclosing file with respect to the separation of grades on the tracks of the Pere Marquette Railroad north of Sawyer. You state "we are not just clear as to how to proceed in regard to the application of John Morley, Highway Commissioner, for separation of grades at this point. We would be pleased to have you render an opinion in regard to this matter."

In reply, I apprehend from the question asked that your difficulty is whether to proceed under the general statute dealing with grade separation matters or under that portion of the highway law which authorizes the Railroad Commission and the State Highway Commission to sepa-

rate grades at existing grade crossings. Act 283 of the Public Acts of 1909 as amended by Act 175 of the Public Acts of 1915 provides in part as follows,—

“The Michigan Railroad Commission and the State Highway Commissioner jointly shall have power, when in their judgment they deem it necessary for the safety of the public, to change the location of or abolish any existing crossing of railroads with highways and to require, when in their judgment it would be practicable, a separation of grades at any such crossing and to prescribe the manner of construction and the terms upon which such separation shall be made and the proportion in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad corporation and the state, county, good roads district or township.”

Act 92 of the Public Acts of 1893 as amended provides a method generally for the separation of crossings.

Section 9 of the said act prescribes the proceedings necessary to bring the matter before the attention of the commission. It would appear from an examination of the petition filed in the instant matter that it was the intention of the petitioner to proceed under the Grade Separation act rather than under the provisions of the Highway act for the reason that the petition is addressed to the Michigan Railroad Commission alone and not to the Michigan Railroad Commission and the State Highway Commission. Proceedings in this matter might be brought, however, under either statute.

Trusting that this answers the inquiry submitted I am,

Very respectfully,

GRANT FELLOWS,

Attorney General.

File is returned herewith.

Cr-k-O

MICHIGAN RAILROAD COMMISSION. RAILROADS. No obligation to erect or maintain fence except along right of way. No statutory obligation to fence property not held for railway purposes.

March 30, 1916.

Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—

Attention Mr. Cunningham.

We are in receipt of yours of the 23rd instant enclosing file No. 6254, the same being with reference to the fencing of properties of the Pere Marquette Railroad at Island Lake.

From the file submitted, it appears that the Pere Marquette is the owner of certain land on the east side of the track and just north of Island Lake station. This land extends for a considerable distance to the east of the right of way proper and is adjacent to Island Lake. From

the sketch submitted, it would appear that a spur or sidetrack leaving the main track just north of the station, extends down through the land in question. It also appears that this land is held by the railroad company as not for railway use and for this reason local taxes are paid on the same. It also appears that Mr. E. P. Decker is the owner of certain real estate situated on the east side of the right of way proper and north of the railway property above referred to; that some years ago a line fence was built between the Decker property and the railway property by the railway company and that since the building of the same it has been maintained by the railroad company. It now appears that a controversy has arisen between Mr. Decker and the railway company as to who should maintain this fence in the future, the railway company claiming that inasmuch as the land adjacent to the fence is not held for railroad purposes that no greater obligation devolves upon them in the way of maintenance than would be the case were the land owned by an individual. You have requested our opinion as to the respective rights and obligations of the parties.

In reply section 15 of Article 4 of Act 194 of the Public Acts of 1873, as amended, the same being compiler's section 212 of the laws relating to railroads, revision of 1915, provides in part that "every railroad company formed under this act or any former act, and every corporation owning or operating any such railroad shall erect and maintain in effective condition of repair, fences on each side of the right of way to their respective roads as hereinafter provided * * *." It will be noted from the provision quoted that it is compulsory for railroad companies to fence the right of way. From an examination of the entire section, however, we are of the opinion that this statutory provision applies only to the right of way proper and does not create an obligation upon the part of the company to fence lands outside of the right of way proper, especially where such lands are not immediately adjacent to a railway track and where such lands are within station limits. Neither do we know of any other statute that would compel the railway company to fence such lands and bear the entire expense. The Supreme Court of this State has decided that there is no common law obligation upon the part of the railroad company to fence its track, citing *Cont. Imp. Co. v. Phelps*, 47 Mich. 299, *Neversorry v. Railroad Co.*, 115 Mich. 146. In other words, there is no obligation to fence railroad property except where such obligation is created by express statute, and we do not believe that the statutes of Michigan expressly create such obligation except with reference to the actual right of way. As to whether the immediate right of way used for spur or sidetrack purposes would come within the purview of this statute is an open question in this state, but that is not the case in the instant matter as will appear from an examination of the diagram submitted. The line fence here in issue is some distance from the spur track and this is not a question of affording necessary protection from injury because of such track but rather a line fence question. The Supreme Court of this State has also held that depot grounds and their approaches need not be fenced, citing *C. & G. T. Ry. Co. v. Campbell*, 47 Mich. 265, *Groudin v. D. S. S. & A.*, 100 Mich. 598, *Rabindon v. C. & N. W. Ry. Co.*, 150 Mich. 390, *Katzinski v. G. T. Ry. Co.*, 141 Mich. 75. The court has also held that the grounds of a flag station where trains are regularly stopped if necessary are depot

grounds although no building is erected thereon and need not be fenced, citing *Schneekloth v. R. R. Co.*, 108 Mich. 1. The court has also held that in certain cases the right of way may be left unfenced as a storing or unloading place although a mile and a half from the railroad station. For the reasons stated, we are impressed with the thought that no different rule of law would apply in the instant matter with respect to the maintenance of the fence in question than would be the case if the land upon each side were owned by private individuals.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

BOARD OF SUPERVISORS. If it is desired to hold regular meeting in April formal action should be taken to that end.

March 30, 1916.

Henry S. Sweeny, Prosecuting Attorney, Petoskey, Michigan:

Dear Sir—I am in receipt of your letter of the 29th inst. and note that it is desired to hold a regular meeting of the Board of Supervisors of your County in April of this year. The question arises as to how such a meeting should be called.

Section 2475 of the Compiled Laws of 1897, as amended by Act 161 of 1909 provides that “a regular meeting of the Board of Supervisors in and for each of the counties of the State may be held on the Tuesday following the second Monday of April in each year at the usual place of meeting of said Board of Supervisors.” I assume from your inquiry that no resolution has ever been adopted by your Board providing for the holding of a regular meeting in April of each year. It occurs to me, however, that the provision of the statute above quoted contemplates some action of this nature on the part of the local Board. Clearly the power to hold such meeting is discretionary, which necessarily implies formal action. I am impressed, therefore, that unless such a resolution has been heretofore adopted the meeting must be called as a special meeting, and subject to the provision of the statute relating thereto.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

STATUTES. Act 135 of 1915 interpreted.

March 30, 1916.

Professor Andrew J. Patten, Michigan Agricultural College, E. Lansing, Michigan:

Dear Sir—I have before me your letters of the 28th and 29th inst. and note that some question has arisen as to the construction of certain provisions of Act 135 of the Public Acts of 1915. Said measure is entitled: “An Act to provide for the inspection and analysis of concentrated commercial feeding stuffs; to regulate the licensing and sale of such con-

centrated feeding stuffs; prescribing the duties of the State Board of Agriculture in relation thereto; and to repeal section eighteen of act two hundred eleven of the Public Acts of eighteen hundred ninety-three, as amended by Act number twelve of the Public Acts of nineteen hundred five, and all other Acts or parts of Acts inconsistent herewith." It is required by section 1 of the measure that any manufacturer, company or persons selling or offering for sale any commercial food that is subject to the provisions of the Act shall furnish a prescribed statement with each car load thereof, of any amount shipped in bulk, and shall affix to each package a statement setting forth, among other items, the chemical analysis of the contents. The subsequent section specifically designates the commercial feeding stuffs that shall be deemed to be within the scope of the Act. The list includes "mixed feeds of all kinds" that are intended for feeding to domestic animals. It is further provided that the Act shall not include "hays, straws, fodders, ensilage, the whole seeds nor the unmixed meals made directly from the entire grains of wheat, rye, barley, oats, flaxseed, maize, buckwheat, wet brewers' grains, malt sprouts, wet or dried beet pulp when mixed with other materials. Neither shall it include wheat, rye and buckwheat brans or middlings not mixed with other substances, but sold separately as distinct articles of commerce, nor pure grains ground together." Subsequent provisions of the Act relate to the details of its administration and the specific duties of the State Board of Agriculture with reference thereto. A penalty is provided for one who sells a commercial feeding stuff within the meaning of the Act without observing the requirements imposed.

As preliminary to the process of bringing grain it is customary to clean the same by a certain process which removes so-called "screenings." Ordinarily screenings are composed in the main of weed seeds, under-sized and broken grain, other grains, and miscellaneous foreign substances. It is the practice in some instances to mix these screenings with the bran that is produced as a result of the grinding process and such mixture is sold for feeding purposes. It appears that when any such mixture is shipped out of the State a tag is placed thereon indicating that it contains "screenings not exceeding mill run." This is done in order to avoid any violation of the Federal statutes relating to the subject.

In view of the practice suggested, the question arises as to whether a mixture of bran with the screenings taken from the grain can be regarded as within the scope of this Act. This must depend, as I read the statute, upon whether or not it is considered to be a "mixed feed." If it is such, then it would clearly seem to be within the expressed provisions of Section 2. I am assuming that a mixture of this kind is in fact a concentrated commercial feeding stuff" as such expression is used in the title to Act 135. It is my understanding from your statements that it generally is so considered.

It will be noted that the exemption in section 2 with reference to wheat, rye and buckwheat brans contains the specific requirement that the same shall not be mixed with "other substances." This of course must be taken to mean that if bran is so mixed it can not be deemed to be relieved from the requirements imposed. I scarcely think that the conclusion can be avoided that screenings even though taken from the same grain from which the bran is produced must be regarded as another substance as such expression is used in the exempting clause referred to.

It follows, therefore, that such a mixture as is indicated by your inquiry must be considered as subject to the provisions of Section 2 and can not reasonably be said to be relieved by virtue of any of the exceptions in the concluding sentences of that section. Any person or persons therefore that wish to sell such a mixture should comply with the Act. If a tag or label is placed on such a product indicating that it consists of bran and screenings, without reference to the proportion of the latter, it is thereby indicated that such product is one to which this Act applies. Any other construction would obviously open the way to evasions of the statute.

You submit the further inquiry as to whether or not poultry foods that consist of a mixture of grains and other substances are subject to this Act. The answer to this question also depends upon the construction placed on the exempting clauses of Section 2. In accordance with these clauses whole seeds are not to be regarded as "feeding stuffs" within the meaning of the expression as used in the Act. While the intention of the Legislature is not clearly indicated, I am inclined to the opinion that the language used should be construed to mean that a feeding stuff consisting entirely of the whole seeds of one grain, or consisting of the whole seeds of a number of the grains, specifically named in the statute, should not be regarded as subject to the provisions thereof. On the other hand, a mixture of these grains, or any of them, with other substances that are commonly placed in poultry foods would clearly seem to be a mixed feed and as such within the provisions of the statute.

As to the powers of the Board of Agriculture to make rulings affecting various phases of the Act, I am constrained to say that I can scarcely give you a definite opinion without knowing what it is desired to do. Inasmuch as the administration of the statute is placed in the hands of the Board, it would seem to be a matter of logical inference that reasonable rules or procedure thereunder may be adopted. Such rules must, however, be in strict conformity with the law, and such as are calculated to effectuate the carrying out of the legislative purpose. It will be noted that the statute in express terms confers no authority to adopt rules and regulations generally; consequently it must be considered that it was not the intention of the Legislature to confer any broad and general authority along this line. As indicated, however, reasonable rules of procedure facilitating the performance of the duties expressly vested in the Board would not seem to be prohibited.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

HIGHWAY LAW. Expenditure of moneys in highway improvement fund is controlled by Township Board and Highway Commissioner.

March 31, 1916.

Mr. George E. Chatfield, Justice of the Peace, South Haven, Michigan:

Dear Sir—I note from your letter of the 27th inst. that your Township will at the coming election vote on the question of issuing bonds for the purpose of raising money to improve certain roads. The ques-

tion has arisen as to whether or not the Township Board must be guided by the wishes of the electors in selecting the particular roads upon which the money thus raised shall be expended. I assume that the question is submitted to the voters in the usual form, that is, the proposition to be decided is whether or not the sum mentioned shall be raised for the highway improvement fund of the Township.

Section 10 of Chapter II of the General Highway Law points out the manner in which moneys belonging to the highway improvement fund shall be expended. In accordance with this section the Township Board is given authority in the premises and may direct the highway commissioner with respect to the laying out, improvement, etc., of highways and bridges. The law does not, either expressly or by implication, confer upon the voters the power to direct that money needed for the highway improvement fund shall be expended on any particular road or roads. Rather as suggested the provisions of Section 10 of Chapter II would seem to require that the discretion of the Township Board and Highway Commissioner be regarded as controlling. In other words, the power of the electors is limited to the determination as to the money that shall be raised for highway purposes. The expenditure of such money must be deemed to rest with the officers mentioned in the statute.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

SCHOOL LAW. Under Section 8 of Act 176 P. A. 1891 a Superintendent of Schools may be hired in a township if such services are reasonable, necessary and desirable.

March 31, 1916.

Mrs. Louise Peterson, Secretary, State Board of Education, Stephenson, Michigan:

Dear Madam—I note from your letter of the 28th inst. that your school district is organized under, and governed by, Act 176 of the Public Acts of 1891, entitled: "An Act for the organization of township school districts in the Upper Peninsula." In view of the provisions of this measure the question arises as to the authority of your Board to employ a Township Superintendent of Schools. You have asked that I give you my views upon the matter.

The statute referred to does not in express terms empower the Board of Education to engage the services of a superintendent or supervisor. Inasmuch as this Act must be regarded as controlling I scarcely think that recourse may be had to subdivision (q) of Section 9 of Act 117 of the Public Acts of 1909, providing for the organization of township school districts generally throughout the State, for the purpose of establishing such power. In other words, the two measures must be regarded as separate and distinct, and a school district governed by the provisions of one is unaffected by the other.

I would, however, call your attention to section 8 of the Act under which your district is governed, which said section defines the powers of the Board. It will be noted that the requisite authority is conferred thereon "to do all things needful and desirable for the maintenance, pros-

perity and success of the schools of said district, and the promotion of the thorough education of the children thereof." It will be noted that the Board of Education is thus invested with a very broad and general power. Without doubt this clause must be construed in connection with the preceding clauses of the same section and must be regarded as conferring only the authority to do such things as are of the same general character as those specifically mentioned. So viewed, however, I am not prepared to say that it is not within the province of the Board to employ a superintendent or supervisor of schools. Rather it would seem that the language of the statute is sufficiently broad to justify this action. My attention is called to no decision of the Supreme Court of this State touching upon this matter. However, an enactment of this kind should be so construed as to carry out the obvious purpose of the Legislature and, in consequence to promote the educational interests of the State and of each particular district. The inference would, therefore, seem to be justifiable that a Superintendent may be employed if conditions are such as to require the services thereof.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

SOLDIERS' EXEMPTION. Does not extend to special assessments levied on basis of benefit received by property.

March 31, 1916.

Mr. C. M. Browne, Hamilton Square, Saginaw, W. S., Michigan:

Dear Sir—I am in receipt of your letter of the 29th inst. in which you refer to opinions heretofore given by this Department with reference to the exemption from taxation granted to soldiers and sailors, their wives, or widows in certain instances. As stated by you it has been our holding that such exemption can not be construed as relieving from the obligation to pay special assessments levied on the basis of benefits received for the construction of sidewalks, sewers, etc. This holding is based on the general rule uniformly applied by courts in construing statutory provisions of this character, to the effect that an exemption must be construed strictly and can not be extended beyond the manifest intention of the legislature. Furthermore in this instance the exemption is found in the general tax law. The inference would, therefore, seem to follow that it was the intention of the Legislature to exempt only from taxes imposed under that law. Had it been the intention to relieve also from burdens imposed under municipal charters or under special acts governing particular improvements and the levying of assessments to cover the cost thereof, I think we must assume that the Legislature would have clearly expressed such intent.

The Supreme Court of this State, in the case of *Railway Company vs. City of Grand Rapids*, 102 Mich. 374, laid down the general rule upon this subject. There the Act providing for the taxation of railroads in a prescribed manner was before the Court. Said measure provided that the tax should be in lieu of "all other taxes." It was contended that this clause should be so construed as to relieve the plaintiff railway com-

pany of the burden of paying an assessment levied under the Municipal charter of the City of Grand Rapids. The Court, however, held otherwise. Justice Long who read the opinion of the Court said in part:

"It is evident that the great weight of authority upholds the doctrine that assessments for local improvements are not within the general exemption from taxation. Under the general railroad law of this State the taxes mentioned are such burdens, charges or impositions as are put or set upon persons or property for public uses; and this law has no reference to special assessments for local improvements in the ratio of the benefit or advantage to be derived from them."

It occurs to me that we must regard this decision as controlling in the matter under consideration. I call your attention also *Lefevre vs. Mayor of Detroit*, 2 Mich. 587; and 37 Cyc. 895.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

ELECTION LAWS. Section 3616 C. L. 1897 relative to the hour of closing polls on election day discussed.

March 31, 1916.

Hon. Rolland E. Barr, St. Joseph, Michigan:

Dear Sir—I am in receipt of your communication of the 18th instant asking for an opinion upon the following question, whether a voter properly in the polling place and waiting to vote at the hour of five o'clock, being prevented from casting his ballot by reason of the line in front of him, may receive and cast a ballot after the hour of five o'clock?

Replying will say that section 5 of Act 190 of the Public Acts of 1891, the same being section 3616 of the Compiled Laws of 1897 reads in part as follows:

"On the day of election the polls thereof shall be opened at seven o'clock in the forenoon, or as soon thereafter as may be, and shall be continued open until five o'clock in the afternoon of the same day, and no longer; * * *"

In 1913 the legislature amended this section by making provision whereby city councils, village councils and township boards may by resolution keep the polls open until eight o'clock in the evening of the same day and no longer.

In construing statutes very similar to ours, different state courts have placed various constructions upon them, some holding that these statutes are mandatory, while others, and perhaps the greater majority have held them to be merely directory in their operation. Upon this point it was said by Justice Cooley in the early case of *People v. Cicott*, 16 Mich. 323:

"In a great variety of cases, it has been held that statutory provisions prescribing the conduct of elections are to be regarded as directory only, except where they are of such a character that a failure to comply with them would have the effect to prevent or obstruct the complete expression of the popular will, or the production of satisfactory evidence thereof." (See cases cited).

Continuing he said:

"And even where the statutory provisions are mandatory, they do not necessarily defeat an election actually held, if the means exist of determining the result. A particular act or proceeding may be rendered void, and the election be upheld notwithstanding.

The principle in all these cases is, that an election is not to be set aside because of an irregularity, unless it appears that that irregularity affected the result. In well reasoned cases where the election was disputed on the allegation that the polls were kept open for the reception of votes after the hour when the statute directed them to be closed, it has been declared that, on general principles, no election could be made void on such grounds, unless it appeared that the votes received after the legal hour of closing changed the result: *Pratt v. People*, 29 Ill. 72; *People v. Cooke*, 14 Barb. 296; same case, 8 N. Y. 91. And in *Lanior v. Gallatas*, 13 La. An. 176, where it was charged that fourteen illegal votes were received, and that 'if the said illegal votes had been rejected, it would in all probability have changed the result in favor of the petitioner,' the court held the averment insufficient, and say that 'to contest an election there should be an averment that the illegalities charged did alter the result; not that it was probable that the result might have been changed.'

If these authorities are sound—as they unquestionably are—we can not be warranted in declaring an election void for an irregularity which probably did not change the result. The courts have always repelled 'the idea that the will of the electors, plainly expressed in the forms prescribed by law, can be defeated by the negligence, mistake, or fraud of the officers appointed to register the result of an election.' *People v. Cook*, 14 Barb. 327; *People v. Vail*, 20 Wend. 14."

It will thus be observed that this language is merely dictum, as the case was presented and determined on different questions of the election law; however, Justice Cooley is in accord with other courts of high distinction. In a leading case upon the point under consideration, an early Illinois case, *Pitt. Supervisor v. The People*, 29 Ill. 72, it was said by the court:

"The allegation of defendant that votes were cast after 5:00 is not clearly established, and is not so found by the jury. Had it been so, it was necessary for him to show how they voted. We cannot presume one way or the other. This has not been shown, and it is impossible to say, if votes were received after 5:00

o'clock, such votes would have changed the result, and if they did not, it would be going very far indeed to say such an irregularity so vitiated the election as to render it void. On general principles no election could be made void on such grounds."

It was likewise held in the case of *Cresap v. Gray*, 10 Ore, 345, that:

"Votes legally cast and received by the county clerk after the time within which a statute directs that they shall be counted, may nevertheless be counted. The statute will be deemed directory."

Other courts have adopted a contrary view and have held such statutes mandatory, going to the extent of holding that where votes have been cast after the legal hour of closing the polls, if it could be shown that said votes affected the outcome of the election, said election would be declared illegal. The Supreme Court of Kentucky in construing a similar statute said:

"Const. Art. 8 Sec. 16, requiring all elections to be held between 6:00 o'clock in the morning and 7:00 o'clock in the evening is mandatory; and when votes were received after that hour, though the reason was the inability of the officers of the election to record the votes offered within the hours named." (*Varney v. Justice*, 9 Ky. Law. Rep. 743.)

It will also be observed in Cyc. under the subject "elections," subdivision E, section 13:

"The provisions of a statute as to the time of opening and closing of polls is so far directory that an irregularity in this respect which does not deprive a legal voter of his vote or admit a disqualified person to vote will not vitiate the election. But if the departure from the provisions of the statute in regard to time for opening or closing the polls was so great that it must be deemed to have affected the result, the election must be held invalid." (See cases cited.)

Upon this point, I also quote from R. C. L. Vol. 9 paragraph 111 where the following general exposition of legal principles upon the point under consideration is stated:

"The time of opening and closing the polling place is ordinarily fixed with definiteness. Where the constitution is silent with respect to this it is of course a matter for legislative regulation, and where the legislature does not prescribe the time it has been held to be governed by the rules of the common law. Where the legislature has prescribed the time, the effect of a failure of the election officers to comply with the requirements is a matter of some concern."

I have been unable to find where the precise question has been determined by our Supreme Court. I am impressed, however, with the

idea that the legislature had in mind a definite purpose in naming the hours during which polling places shall remain open for the casting of votes. Election laws, being in derogation of the common law, are strictly construed. With this in mind, it will be noticed that the hours named are from seven o'clock in the forenoon until five o'clock in the afternoon of the same day "and no longer." By legislative amendment in 1913 provision was made whereby city and village councils and township boards might by resolution keep the polling place open until eight o'clock in the evening of the same day, and no longer. In my judgment, when the legislature employed the words "and no longer," it meant to place a definite limit upon the hours of closing the polls. I think these words have a significant meaning.

I have set out some of the different views expressed by the courts of the country for the purpose of showing that there appears to be some diversity of opinion upon the question, and that the question is not beyond dispute. It is my impression and I am so of the opinion that a loose adherence to this statute might result in serious mischief, if the bars of the statute were thrown down. The object of the act is stated to be to prescribe the manner of conducting and to prevent fraud and deception at elections in this state. There is no safer way of preventing fraud and deception in elections than by following the provisions of the law regarding the conduct of elections.

If your city council deems it wise to extend the hours of voting, it could under the provisions of this statute by resolution determine to do so.

I am, therefore, of the opinion that, inasmuch as the above statute prescribes the hour of closing of the polls, that time should not be extended beyond that provided. I trust that these views may be of assistance to you.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Mo-v-O

HIGHWAY LAW. A portion of a road within a city not to be regarded as county road, the resolution of the road commissioners having been adopted in July, 1913.

April 4, 1916.

Mr. John C. Shaffer, Prosecuting Attorney, Gladwin, Mich.:

Dear Sir—I note from your letter of the 31st ult., that the county road system is now in force in your county; that in 1896 a certain road was adopted by the commissioners as a county road in accordance with the provisions of the statute then in force; and that subsequently in the year 1906, a resolution was passed discontinuing and abandoning said road as a county road. You state, however, that there is no evidence with respect to the publication of notice of such abandonment. A portion of the road in question now lies within the corporate limits of Beaverton which became a city in 1903 pursuant to a local act of the legislature. A certain bridge on such portion is now in need of repair and the question arises as to whether moneys in the county road

fund may be legally expended for such purpose. I note also your statement that in July, 1913, the county road commissioners passed a resolution adopting the road as a county road, the requirements with respect to such adoption being duly observed. At such time, however, a part of a city street could not under the general highway law of the State be taken over as a county road. Although such fact does not affirmatively appear from your statement I infer that that portion of the road lying within the City of Beaverton has been, since its abandonment in 1906, regarded as subject to municipal control and maintained accordingly. Neither does it appear that no notice of such abandonment was in fact given although the evidence of such fact is unavailable. In such case the presumption obtains that the requirements of the statute have been duly complied with.

From the facts before me, I am impressed that such part of the road in question as lies within the City of Beaverton may not now be regarded as a county road. Such being the case, it may not be repaired as such; nor may any of the funds raised under the county road system be used for repairing the bridge to which you refer. Rather such undertaking must be regarded as a municipal affair.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

SCHOOL LAW. In a city of the fourth class one central polling place may be provided for school elections.

April 4, 1916.

Mr. E. P. Rice, Secretary, Board of Education, Midland, Michigan:

Dear Sir—I note from your letter of recent date that your school district comprises a city of the fourth class; that it is in consequence governed by the provisions of the fourth class city act. Such being the case, the question arises as to whether or not it is competent for your board to designate a single polling place in the city for the election of school officers. You have asked the views of this Department upon the matter.

Sections 3 and 4 of Chapter 32 of the act above referred to, the same being sections 3340 and 3341 of the Compiled Laws of 1897, as amended, would seem to be decisive upon this matter. The first cited section provides that the annual election of trustees shall be held "at such places, not exceeding five in each city, as the board of education shall designate." It seems to follow from this clause as well as from the subsequent language of the statute used in connection therewith that the board of education has entire discretion with reference to the number of polling places, subject to the provisions that such places shall be convenient for the accommodation of voters and that not more than one shall be used in any ward. The following section contains a proviso to the effect that electors shall cast their votes at the polling place in the ward in which they reside, provided, however, that if there be no polling place in such ward, then each elector shall vote in accordance with the designation of the board of education. Construing these

provisions together, it is evident that it was the intention of the legislature to permit the board to establish such number of polling places as should be deemed requisite for the accommodation of the voters. If, therefore, one place can be regarded as sufficient no reason occurs to me to prevent such designation. In school elections the provisions of the Constitution with reference to voting in a precinct or ward where the voter resides have no application. Rather the provisions of the statute are to be regarded as controlling in such cases. As suggested it is not necessary that a separate polling place be provided in each ward under the law by which the school election is governed.

Very respectfully,

GRANT FELLOWS,

Attorney General.

Ca-v-O

CRIMINAL LAW. A prosecution for embezzlement will not lie against the bailee who is not required to return the identical property leased to him.

April 6, 1916.

Mr. Herman Dehnke, Prosecuting Attorney, Harrisville, Michigan:

Dear Sir—You have recently requested the views of this Department as to whether or not a criminal prosecution may be based on a transaction detailed by you. As I understand the situation a party designated as "Jones," approximately two years ago, turned over to a second party called "Smith" a certain number of sheep under the customary agreement providing for the return at the end of three years of double such number, such sheep so returned to be as good as those delivered by Jones to Smith. In the written agreement covering the transaction it was provided that Smith should not kill or dispose of any of the sheep and that the same should be the property of Jones until the contract should be fulfilled. After the lapse of two years it is discovered by Jones that Smith has no sheep, having disposed thereof in some manner. It is implied that Smith has entered into a number of agreements of this character and has disposed of the sheep received by him in each instance.

Section 11570 of the Compiled Laws of 1897 provides for the punishment of the crime of embezzling goods or other property that may be the subject of larceny. Section 11621 of the same compilation covers the embezzlement or fraudulent disposing of goods or chattels that are leased or sold under a contract of purchase not yet fulfilled. It would appear that if a prosecution will lie at all based on the facts as stated by you, the same must be predicated on one or the other of these sections.

I am scarcely prepared to say that either can be deemed broad enough to cover a transaction of the kind suggested. As I understand the terms of the written contract that was entered into by Jones and Smith, the latter may perform at the expiration of the three year period by delivering to the former the required number of sheep, without reference to whether or not such animals are the same as those received. Obviously a part at least of those returned must be increase or else sheep

that Smith has procured from other sources. As matters now stand, therefore, it can scarcely be said that any one has been actually defrauded of property.

There seems to be a strong and marked tendency of Courts to construe strictly statutory provisions authorizing the punishment as embezzlement of transactions that were not regarded as criminal at common law. In the instant case, and under any possible view of the situation, the sheep having been lawfully secured by Smith, his disposing thereof was not a crime at common law. I am assuming, of course, that the transaction when entered into was bona fide, rather than a cloak to obtain property. I think it may be said that if the agreement required the return of the specific property let or leased, the disposal thereof fraudulently, and with the intent to deprive the owner of such property, would be within the purview of the statute. As pointed out above, however, the contract does not require that the specific property transferred to Smith should be returned by him. Such being the case I am constrained to the opinion that his disposing thereof is not embezzlement as defined in either of the sections above referred to. This conclusion has reference to the possibility of maintaining a criminal prosecution after the three year period has elapsed, as well as at the present time. Undoubtedly if a crime has in fact been committed it would be unnecessary to await the period of the expiration of the contract before making complaint; although of course the failure on the part of Smith to perform his agreement at such time might have some probative force.

My attention is called to no decision of the Supreme Court of this State that can be regarded as squarely in point on this proposition. The conclusion above suggested is, however, supported by the decision of the Pennsylvania Court, in *Krause vs. Commonwealth*, 39 Am. Rep. 762. There the owner of certain horses delivered them to the defendant under an agreement by the latter to purchase the same. It was understood that the animals should remain the property of the vendor until paid for and further that they should be returned at a specified date if the purchase price was not turned over. The defendant disposed of the horses, however, without paying the purchase price. He was prosecuted for the crime of larceny and was acquitted. Thereupon the State put him on trial again for the offense designated as "larceny by bailee." He was convicted on this charge in the Court below but the Supreme Court reversed the case on the ground that "payment would have been a complete performance. Krause was not bound to return the identical property * * * This was something more than a bailment, and Krause was not a bailee in the statutory sense." The note to *Calkins vs. State*, 98 Am. Dec. 121, discusses cases of this character at some length. Among other statements it is there said that "it must appear that the defendant is under a fiduciary obligation to restore the specific property of which the bailment is composed." In the absence of such obligation it is declared that a statutory provision relative to embezzlement by a bailee does not apply. In support of the rule thus laid down several English cases are cited, and also two decisions of the Texas Court of Appeals. The language found in 9 Ruling Case Law 1284, to which you have referred, is in harmony with, and apparently

based in part at least on these authorities. I am impressed that it lays down the correct rule. To the same effect may be cited Wharton on Criminal Law, Section 1303.

While the sections of the statutes above referred to do not in specific terms refer to bailments, or fraudulent conduct on the part of bailees, I am impressed that the same general considerations must prevail in construing them. It is my opinion accordingly that a criminal prosecution will not lie based on the facts as stated in your letter.

Respectfully yours,

GRANT FELLOWS,
Attorney General.

Ca-pi-O

CRIMINAL LAW. Prosecution for maintaining gaming house under Sec. 5935, C. L., 1897.

April 7, 1916.

Mr. Herbert C. Hall, Prosecuting Attorney, Ionia, Michigan:

Dear Sir—Your letter of the 6th inst., requesting the views of this Department upon the matter therein submitted, is at hand. It appears that a prosecution has been instituted against a certain person in your County for an alleged violation of Section 5935 of the Compiled Laws of 1897, it being charged that such person did, on specified days and dates, keep a common gaming house for hire, gain or reward contrary to the provisions of said section. You state that the prosecution will be able to prove that the game of euchre was played in the building in question and the loser after each game purchased cigars or trading checks from the defendant and gave same to the winner. It further appears that there is no positive proof available to show that the players were required to make such purchases of the defendant. It is rather a matter of inference that they were expected so to do. The sole profit which defendant, who is the proprietor of the room, receives for the maintenance of the tables was by way of the sale of cigars and other merchandise.

It would seem to be settled beyond question by your statement of facts that gaming, as such term is used in the statute, has been carried on in the pool room to which you refer, with the knowledge and consent of the proprietor thereof. The question then arises as to whether or not the benefit or gain that may accrue to such proprietor from the sale of merchandise to those who have used the tables for gaming can be deemed to bring the case within the statute. In other words, can it be said that the proprietor of this pool room has maintained a gaming house for "hire gain or reward"?

On consideration of this question I am impressed that unless a case of this character is deemed to be within the provisions of the statute, the door will be open to evasions of its provisions. Obviously, the Legislature in the enactment of Section 5935, and particularly in the amendment thereof, sought to discourage the maintenance of gaming houses where the purpose of the proprietor was to make profit. I scarcely think that the section in its present form should be limited to in-

stances where those who indulge in gaming in such a place actually make a direct payment of a specific sum to the proprietor. If patrons customarily purchase merchandise from the proprietor of such a place it seems to me that proof of such fact may well justify a jury in concluding that such proprietor did in fact receive a reward for the maintenance of the place and of the gaming tables, and did maintain the same for gain. As a practical proposition I apprehend that the operator of a pool room would not permit his place to be used commonly for gambling unless some benefit either direct or indirect accrues to himself. In case of a prosecution, as above suggested, the jury might infer such fact from evidences as to purchases of merchandise and the customary habit of the patrons in such respect.

You have called attention to the rule of law upon this subject as laid down in the American & English Encyclopedia of Law. I think that the text suggests the correct view; and the cases cited clearly support the same. Thus, in *Stoltz vs. People*, 5 Ill. 168, the statute made it an offense for one to keep a common gaming house table or room for "gain or profit." The facts indicated that the defendant was the proprietor of a grocery store. It was not shown that he received any pay from those who gambled in his establishment, but the Court permitted the jury to find from the evidence before them that the proprietor did receive some gain or profit. In refusing to grant a new trial on the ground, among others, that the evidence did not support the finding of the jury, the Court said:

"The charge that persons came together and gamed in the house of the defendant was properly proved. And we think the jury were authorized to infer from the evidence that the gaming was done with his permission, and that he derived benefit from it. He was the keeper of a public house, and it can hardly be supposed that he was ignorant that gaming was practiced in it. If known to him and not prevented, he must have permitted it. He may not have received pay directly as the price of the permission, but if the tendency of permitting gaming in his house was to increase its custom, as it probably would, he would be benefited incidently, and be within the statute."

The Illinois Court thus expressly held that an incidental benefit received by the proprietor of a gaming house would be sufficient to bring him within the terms of the prohibitory statute. The facts of the case to which you refer would seem to be stronger than were those passed on in the case cited. If it can be shown that those who indulged in gambling in this pool room customarily purchased particular merchandise from the proprietor with which to pay gambling debts, the fact of benefit would seem to be established rather than left to inference.

The Kentucky Court, in *Harper vs. Commonwealth*, 13 Ky. 290, 19 S. W. 737, also sustained the language of the text as laid down in the A. & E. Ency. of Law. There the proof showed that the defendant occasionally played in the games, and that he sold chips to others and cashed them at the close of the game. It was not shown that he received any direct reward from the patrons of the place. The language of the statute forbade the keeping of a gaming house or place for "compensation, reward

or commission." The Court held that this must be construed to mean the receiving of compensation "in any form whatever." The Court below so charged the jury and in sustaining the charge the Supreme Court said, in part:

"We think the jury had a right to infer from the facts proven that he did receive compensation or commission. For it is not at all probable, but highly improbable, that the appellant, not being an idiot or feeble-minded, would devote his time to running that game, as it was run, for mere past-time or accommodation; but the jury had the right to infer that he received compensation, reward or commission in some form."

The case of *Hairston vs. State* (Texas) 30 S. W. 811, is not in conflict upon this proposition with the cases above referred to. The decision of the Court was there based on the proposition that the patrons of the place in question had not been in fact, "gaming" as the term was used in the statute under which the indictment was drawn. The conclusion of course followed that the house was not a gaming house.

I believe that the construction of the statute of this suggested by the Supreme Court in the prosecutions brought under it, particularly in the *Weithoff* cases, is in harmony with the views of the Illinois and Kentucky Courts as suggested by the decisions thereof above cited. Such being the case it is my opinion that in the instance that you have stated it should be left to the jury to say, from the facts that are placed before them, whether or not a gaming house has been kept "for hire, game or reward." The offense may of course be established by circumstantial evidence, in support of which proposition I call your attention to *Commonwealth vs. Warren*, 161 Mass. 281; 37 N. E. 172.

I infer from your statement that you will have no difficulty, in case a prosecution is instituted based upon the facts that you have stated, in establishing that the place itself comes within the designation of a "gaming house" as used in the statute. The fact that the place is maintained for other purposes that are not illegal would not of course alter its character in this respect.

In other words, if gambling is carried on therein it is a gaming house within the meaning of the law even though such gambling is merely incidental to the main purpose. *State vs. Eaton*, 85 Me. 237, may be regarded as conclusive on this point. The Court there cited the earlier case of *Commonwealth vs. Taylor*, 14 Gray, 26, where Chief Justice Shaw said:

"If one of the purposes of persons resorting to the defendant's house was gaming, and that necessarily unlawful gaming, and that habitually allowed by the defendant as keeper of the house, it brought him within the statute."

To the same effect see 40 Fla. 169; 23 So. 942.

Trusting that these suggestions will indicate to you the views of this Department upon the matter, I remain,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

JUDGE OF PROBATE. Need not turn over to County treasury fees received for performing marriage ceremonies.

April 7, 1916.

Hon. Arthur W. Ganschow, Judge of Probate, Saginaw, Michigan:

Dear Sir—Your letter of recent date with reference to the disposition of fees received by a Judge of Probate for the performance of marriage ceremonies, is at hand. The point at issue is whether such fees may be retained, or if they must be paid into the County treasury to the credit of the general fund.

It does not occur to me that the statute fixing the compensation of Probate Judges can be properly so construed as requiring that all moneys received for solemnizing marriages shall be turned over to the County. Rather I believe that the salary should be regarded as compensation for the performance of what may be said to be the official duties imposed upon the Judge of Probate. It can scarcely be said I think that the performance of such a ceremony is an official duty. Rather the statute confers upon the Judge of Probate the privilege and authority of acting in such a case; but the performance of the ceremony can scarcely be viewed as a judicial act, or in fact as anything more than the exercise of the privilege. So viewed the conclusion must necessarily follow that fees received for the solemnization of marriages may be retained by the Judge of Probate. The fact that no fee need be charged in ordinary cases would in itself seem to be conclusive upon this proposition. Had the Legislature intended that the treasury of the County should benefit by the exercise of this privilege on the part of the Judge of Probate undoubtedly a specific and mandatory provision with reference to the collection of the fee would be incorporated in the statute. Even in the case of ceremonies performed under exceptional circumstances, for which the Judge is entitled to collect \$2.00 for his own services and is required to forward \$1.00 to the Secretary of State, the language of the statute would clearly indicate that if he collects the \$2.00 fee he may retain same. The provisions of the Judicature Act, although of course not affecting the compensation of present incumbents, are of interest as suggesting the Legislative construction of prior statutes fixing the compensation of the Judge of Probate. Section 3 of Chapter III of said Act expressly contemplates that certain services performed may be compensated for other than by the salary. Apparently it was the intention of the Legislature not to change the existing law in such respect.

Respectfully yours,

GRANT FELLOWS,
Attorney General.

Ca-pi-O

MOTOR VEHICLE LAW. AUTOMOBILES. Are subject to taxation under the general law unless specific tax thereon is paid under Act 302 of 1915.

April 8, 1916.

Board of State Tax Commissioners, Lansing, Michigan:

Gentlemen—

Attention Mr. Burtless.

Your request for an opinion as to "whether or not automobiles for which no license to operate on the highway has been secured are subject to taxation under the provisions of the general tax law" is at hand. In reply I would say that Act 302 of 1915, the so-called Motor Vehicle Law, does not exempt an automobile from taxation under the general law as personal property unless the specific tax is paid on such machine in accordance with the act. One who owns a motor vehicle and does not desire to operate the same on the public highways is not, of course, required to procure registration thereof or to pay the specific tax under the act cited. In such case the machine must be regarded the same as is personal property generally and should be assessed accordingly. It is obvious that any other interpretation might result in many cases in relieving such species of property from any form of taxation whatever. I scarcely think that the legislature intended that any such result should follow. It is my opinion accordingly that taxing officers throughout the State should adhere to the rule above suggested and assess motor vehicles unless the specific tax has been paid thereon.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

EMPLOYERS' LIABILITY LAW. MICHIGAN NATIONAL GUARD.

Liability of the State with reference to the death of Sergeant H. V. Kain.

April 10, 1916.

Board of State Auditors, Lansing, Michigan:

Gentlemen—

Your communication of the 5th instant received as follows:

"Inclosed please find petition of Nettie L. Kain, widow of Harry V. Kain, late Sergeant of Company D, 32nd Regiment, M. N. G., requesting relief on account of the death of said Harry V. Kain, deceased, who died as a result of an injury received on August 14, 1915, while on military duty at the Grayling encampment.

Accompanying the petition you will find an affidavit made by Mrs. Kain in support of the petition; also report of injury and

affidavits taken at the time of the accident, and which are now on file in the Adjutant General's office.

I am directed by the Board of State Auditors to refer the matter to you with a request for your written opinion as to whether or not it is within the province of this Board to adjust this claim, and, in case it is, the manner of procedure and upon what basis the measure of damages, if any are allowed, should be computed.

As the papers from the Adjutant General's office are the original records, I would respectfully ask that you return the same with your opinion."

In reply thereto would say that the Military Board recently requested an opinion from the Judge Advocate General of the Michigan National Guard, Major Samuel D. Pepper, upon this proposition. Before passing upon the questions involved, the Judge Advocate General consulted with me and agreed to submit his opinion for my approval or disapproval. Accordingly after his opinion was prepared, it was submitted to me in the form of a brief. After an examination of the statement of facts and the arguments contained therein and after certain suggestions which I made with reference thereto had been complied with, I orally concurred in the opinion of the Judge Advocate General.

For your complete information as to the contents of this opinion and as to what I therein agreed to, I am enclosing a copy of Major Pepper's opinion which has been furnished to me and which I here adopt as expressing my own views.

Perhaps, I should go further and say that I am satisfied of the following propositions: (1) that the military law of the State as it now exists makes the relationship between the State and the enlisted man in the Michigan National Guard one of contract; (2) that the contract may be classed as one of "hire" because of the duties imposed upon the soldier and because of the compensation the State makes for the services performed; (3) that the services of a soldier during a maneuver camp must be deemed "actual service" under section 28 of the general military law and that those services are in the nature of labor for the State; (4) that the general military law does not make any provision for compensation to the dependents of a soldier who happens to be killed while under orders at a maneuver camp, section 47 of the law being confined to cases occurring while the National Guard is engaged in riot, etc., duty; (5) that where a soldier meets death while on duty at a maneuver camp and in the performance of any duty or obligation imposed upon him, or expected of him, the same comes within the terms of the Employers' Liability Law, the State being deemed the employer and the soldier the employe, and his dependents, if any, would be entitled to compensation as fixed in that act; (6) that the State itself is the employer and not the Military Board, nor the Governor, nor the Commanding officer of the troops, nor the military department; (7) that such a claim should, therefore, be presented to the Board of State Auditors as one not otherwise provided for by law and that the Board is authorized to examine, adjust and fix the compensation as between the State and the dependents; (8) that any compensation awarded should be ordered paid out of the general fund of the State, the same as in other cases not specifically provided for.

I have examined the papers which you have forwarded relative to this claim and will say that while the facts therein contained may not be all that the Board may require, yet I am of the opinion that the claimant makes a prima facie showing which would entitle her and her children as dependents to compensation. It is my understanding that soldiers who attend the national encampment held at Portage Lake are required by their officers to keep themselves clean and to take advantage of the bathing facilities afforded by the adjacent waters of the Lake and that this practice is in keeping with that which prevails in all armies; that Sergeant Kain met his death while attempting to swim or bath in this lake; that he did not appear to be doing anything out of the ordinary such as would impute any degree of fault or negligence on his part. I also understand from the files that no autopsy was performed to determine whether death was due to drowning or to the bursting of a blood vessel, but that the surgeons who worked over his body found both blood and water in his lungs which indicates that death was due probably to both drowning and the bursting of a blood vessel. Under such facts, I am of the opinion that the presumption is in favor of death by drowning. Possibly it would make but little difference unless it could be shown on the part of the State that death was from natural causes solely. These facts I think the Board should examine.

In regard to the basis of compensation I agree with the Judge Advocate in saying that the compensation should be based upon the decedent's pay as a militia man rather than upon his earnings as a civilian, and I am further of the opinion that his average weekly wages as a soldier should be computed by multiplying his daily compensation as a soldier by three hundred and dividing by fifty-two, as provided in section 11 of Part II of the Employers' Liability Law. I am of the opinion that the rule laid down in *Andrewjwski v. Wolverine Coal Co.*, 182 Mich. 303, does not apply to this case.

Trusting that this opinion taken in connection with the more extended brief of the Judge Advocate General will fully advise you in the premises, I am,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-v-O

BANKING LAW. BANK HOUSE. Proposition examined relative to proposed banking house investment.

April 10, 1916.

Hon. Frank W. Merrick, State Banking Commissioner, Lansing:

Dear Sir—We have had under consideration for some time the proposition submitted to your Department by one of the State Banks in Detroit relative to the proposed building of a banking house where the cost of the land and the building will be approximately two million dollars, which amount equals the capital of the bank. Inasmuch as section 11 of the general banking law only permits 50% of the capital to be invested in a banking house, this bank has submitted several propositions for your approval. These propositions are as follows:

"(1) A state bank with \$2,000,000 paid in capital desires to invest \$1,000,000 in a banking office and office building as a source of income, as follows: To obtain a site and erect an 18-story banking and office building at a total cost of not exceeding \$2,000,000 using therefor one-half of its paid in capital, viz.: \$1,000,000, and issuing building bonds for the remaining \$1,000,000, the principal and interest of which bonds shall be payable solely from the net income of the property, and which bonds shall be, according to their terms, solely payable from such net income as may be derived, and not a claim or debt against the bank, not a claim against any of its property nor assets nor against the building, but merely against the net income until the principal and interest of the bonds are paid. Is this permissible?

(2) Instead of the issuance of the bonds by the bank, may an independent corporation or an individual or individuals procure title to the site, erect the building, sell it absolutely to the bank for \$1,000,000, reserving the title to the net income until the amount received from such net income shall reimburse it or him or them for the balance of the cost plus 5% per annum until paid?

(3) May an independent corporation, individual or individuals owning building and site worth \$2,000,000 sell to the bank an undivided one-half interest therein for \$1,000,000, they holding as tenants in common, and then lease the remaining undivided one-half interest therein to the bank for a rental equal to the net income of the whole building, with the proviso that when the bank has paid from such net rental an amount sufficient to cover the value of the undivided one-half interest plus 5% interest, the whole title thereto shall vest in the bank?

(4) If an independent corporation, individual or individuals procured the site and erected the building at a cost of \$2,000,000, and gave a trust mortgage on the property to secure the payment of \$1,000,000 construction bonds at rate of \$100,000 a year inclusive of interest, could a state bank of \$2,000,000 paid in capital buy the property for banking offices and apartments as a source of income for \$1,000,000, subject to such trust mortgage, on the express stipulation, however, that the bank does not assume and agree to pay the mortgage or bonds secured thereby, but that, so far as the bank is concerned, the holders must look to the property for liquidation, and payment?

(5) Can a state bank invest one-half of its paid in capital in a building and site as a co-tenant in common with another corporation, individual or individuals, and later by an increase of its capital paid in, buy out its co-tenant?"

Proposition No. 1, I think should be answered in the negative. Under this proposition the net income from rentals, etc., would be used in discharging the principal and interest on the bonds. Such rentals are assets of the bank and the bank would, therefore, use its assets in paying off the mortgage bonds, thus increasing its investment in the bank-

ing house. The proposition is clearly an evasion of the restrictions imposed by section 11 and should not be approved.

Proposition No. 2. This is subject to the same objections as the first proposition and should likewise be disapproved.

Proposition No. 3. This proposition is subject to the criticism that the bank has already invested up to its limit in the banking house and then proceeds to lease the other undivided half interest from the other tenant in common for an amount equal to half the value of the building. This proposition is so clearly an evasion of the law that it should be given no further consideration.

Proposition No. 4. I do not see how a distinction can be made between the bank being liable for a debt and property of the bank being liable. In any event failure to meet the terms of the mortgage lien would involve the assets of the bank, especially since the bank would propose to invest one million dollars of its capital in the real estate. This proposition is an evasion of section 11 and possibly of section 45 which provides that a bank cannot pledge its assets as collateral security so as to give a preference to the creditor.

Proposition No. 5. This proposition is governed by a separate opinion this day rendered to you and in short may be answered as follows: that there is nothing in the banking law to prohibit a State bank from being a tenant in common with another corporation or individual provided it does not involve as a necessary consequence a partnership agreement. My fear would be that a partnership agreement would be necessary and that would be especially true where the parties as tenants in common contemplate from the beginning that one of the parties should purchase the other's interest and that in the meantime one of the parties would be acting as a trustee or agent for all in the collection of rents, payment of taxes, insurance, etc. I would suggest, as I did in my other opinion, that any contract made between the tenants in common under this proposition should be submitted to the banking department before taking effect.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P. S.—I return herewith your correspondence with the bank.
P-v-O

BANKING LAW. Banks may invest in real estate for banking house as tenants in common with another corporation or person but cannot enter into a partnership agreement with respect thereto.

April 10, 1916.

Hon. Frank W. Merrick, State Banking Commissioner, Lansing, Mich.:

Dear Sir—Your communication of the 13th ult., received as follows:

“I am directed by the Commissioner to ask for an opinion from your department on the following questions:

First. As to whether or not a State bank can own and carry

as Banking House an undivided half interest in same when the total cost of the Banking House exceeds fifty per cent of capital, the other undivided interest being owned by a Building Company consisting of bank directors.

Second. We will also appreciate your opinion as to whether or not a State bank can carry as Banking House a building with title to upper story or stories in other corporations, fraternal or otherwise."

In reply thereto would say that answer to your communication has been delayed because of the suggestion that the Banks which are interested in this question proposed to submit a brief. Since that suggestion was made the interested parties have for some reason concluded not to submit a brief and you now desire a reply.

Answering your first question would say that the right of a bank to purchase, hold and convey real estate is governed by Section 11 of the General Banking Law, which provides, in part, as follows:

"A bank may purchase, hold and convey real estate for the following purposes, but no other:

First. Such as shall be necessary for the convenient transaction of its business, including with its banking office, other apartments to rent as a source of income, but which shall not exceed fifty per cent of its paid in capital; * * *."

This section does not attempt to define the character of the title to the real estate which a bank may purchase; nor does it prescribe any limitations except such as may be inferred from the words themselves "purchase, hold and convey real estate." We have held that under this provision a bank may obtain less than a fee, as for instance a ninety-nine year lease.

Section 8825 of the Compiled Laws of 1897 provides as follows:

"Estates, in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy, and in common; the nature and properties of which, respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter."

Section 8826 provides:

"All grants and devices of lands, made to two or more persons, except as provided in the following section, shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy."

It has been held that a corporation can not take an estate in joint tenancy, either jointly with another corporation or with a natural person. 10 Cyc., Page 1132. But it can take and hold as a tenant in common with another corporation or with a natural person. See *Dewitt vs. San Francisco*, 2 Cal. 289; *Estell vs. Southern University*, 12 Lea

Tenn. 476; Haven vs. Mehlgarten, 19 Ill. 91; Hackett vs. Railway Company, 12 Ore. 131; 10 Cyc. 1132. It is a general rule that corporations can not enter into partnership agreements and this rule would prohibit a corporation from holding lands in partnership or under partnership agreements; but the rule as to partnerships would not prevent a corporation from holding an estate in common with another corporation or with a private person.

Answering your first question, therefore, I would say that a bank might hold title in common with another corporation or private individual to real estate to be used as a banking house, provided there does not follow as a matter of necessity the entering into a partnership agreement relative to the use of the property. This I think would not prevent the tenants in common from agreeing by contract as to which portion of the proposed property should be used by either party but would prohibit any agreement by which the one tenant in common should permit the other tenant in common to bind the entire property for obligations of a single tenant in common. In this connection I would suggest that any agreements made between the tenants in common as to the use of the property should be submitted to the Banking Commissioner so as to avoid ultra vires acts on the part of the Bank.

Answering your second question your attention is called to an opinion rendered by me to Mr. Leland F. Bean on pages 427 and 428 of the Attorney General's Report for 1915, in which the question was raised as to whether a township could own the fee in a second story of a building. In that opinion I said:

"It does not occur to me that the township could own the second story of a building in fee. Such an attempted purchase of a building of a portion thereof apart from the realty would in all probability be construed as a severance in legal effect, and an estate in fee can exist only in land, and applies to buildings or other structures only insofar as the same are regarded as attached to and a part of the land. It would be impossible for the land to be held in fee by one person and a building on such land to be held in fee by another."

I am clearly of the opinion that the title to upper stories of a building can not be held in fee by any person other than the owner of the land upon which the building stands.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

ANTI-DISCRIMINATORY LAW. Under Act 76, P. A., 1915, the Anti-Discrimination Commission has authority to hire a stenographer to take testimony at hearings and a claim for the same should be allowed by the State Board of Auditors out of the general fund.

April 10, 1916.

Board of State Auditors, Lansing, Michigan:

Gentlemen—Your communication of the 5th instant requesting my opinion upon the validity of the claim of Mattie E. Loomis for services as stenographer reporting and transcribing hearings under instructions from the Anti-Discrimination Commission. The bill consists of items amounting to \$158.00 for a day and a half reporting the hearings and an original and two copies of the transcript of the same.

In reply thereto would say that the Anti-Discrimination Commission was created under section 11 of Act 76 of the Public Acts of 1915, and consists of the State Banking Commissioner, the Attorney General and the Commissioner of Insurance. This Commission is authorized to order hearings either upon written complaint or upon its own information that discrimination in rates exists between risks in the application of like charges and credits or which discriminates between risks of essentially the same hazard and having substantially the same degree of protection against fire. Section 11 also prescribes the procedure to be followed.

In the case under consideration the Commission acted upon certain complaints against the persons and companies referred to in the bill and ordered the hearings for March 2d. An adjournment was had from March 2d to March 16th at which time the hearings were completed. The services of this stenographer were engaged and deemed necessary by the Commission because of the necessity of perpetuating the testimony and record.

While the act does not expressly authorize the employment of a stenographer to take testimony, yet the authority given the Commission to hold the hearings and to act upon the testimony given therein is in my opinion a sufficient warrant for the hiring and payment of a stenographer. No provision is made in the act for expenses of the Commission out of any particular fund, but as expenses are clearly contemplated and necessary, I am of the opinion that it is a proper claim against the general fund of the State and one which should be audited by your board.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-v-O

ORCHARDS AND NURSERIES. Township inspectors thereof under Act 91 of 1905, are to be chosen by the township board and not at the annual township meeting.

April 10, 1916.

Prof. L. R. Taft, State Inspector of Orchards, East Lansing, Michigan :

Dear Sir—I note that at the recent annual township meeting in one of the townships of Newaygo County, an attempt was made to select, by resolution of the electors, inspectors of orchards in said township. You have asked my opinion as to the legality of the action so taken.

My attention is called to no provision of the statute authorizing the electors at the annual meeting to appoint fruit and orchard inspectors. Act 91 of 1905 vests such power in the township board, to be exercised whenever certain conditions obtain. In view of the provision of the statute it does not occur to me that the action of the electors can be given legal force and effect. If it be regarded as an attempt to advise the township board, or to suggest thereto what appointees should be selected, it is, of course, optional with said board to be controlled thereby. In other words, the power being vested in the township board it can only be exercised by that board. The tenure of the present incumbents of such offices may not in consequence be deemed to be affected by the resolution passed by the township meeting.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

ELECTION LAW. Use of slips in voting.

April 10, 1916.

Mr. L. H. Fancher, Big Rapids, Mich. :

Dear Sir—Your letter of recent date enclosing duplicate of a ballot cast at your recent township election is at hand. I note that you are chairman of the board and that some question has arisen as to the manner in which this ballot should be counted. It has printed thereon a single ticket with a candidate for each of the offices to be voted for. It appears that a slip bearing the words "for Highway Commissioner—Grant Thompson" was pasted on the ballot in such a way as to entirely cover the name of the candidate for the office of supervisor that was printed thereon. Inasmuch as we can judge of the intention of the voter only by the way in which he has marked his ballot, we are forced to conclude that he intended to vote for Mr. Thompson for the office of supervisor. I am impressed that the ballot should be so counted and should also be counted as one vote for each of the other candidates whose names are printed thereon including Mr. Modrow, candidate for the office of highway commissioner. This view necessarily disregards the fact that the slip bearing the name of Thompson indicated that he was running for highway commissioner. I believe, however, that the designation of the various offices as indicated on the ballot must be regarded as controlling. It was, of course, the privilege of the elector to vote for Mr. Thompson for supervisor if he desired so to do and the fixing of the slip in the

particular place where it is found can be taken in no other way than as indicating such intention.

I am returning herewith the sample ballot.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

ELECTION LAW. Ballots considered.

April 10, 1916.

Mr. A. L. Sayles, Prosecuting Attorney, Newberry, Mich.:

Dear Sir—I note from your letter of the 7th instant that some dispute has arisen in one of the townships in your county with reference to the counting and canvassing of votes cast for candidates for the office of township clerk. A recount has been requested in accordance with the statute and it has been agreed to leave the matter to this Department for an opinion as to the status of certain ballots. You have enclosed with your letter nine of these ballots which are, I understand, duplicates of ballots cast at the election. These are numbered from one to nine inclusive and you ask my views on each one separately. It appears that the official ballot had printed thereon a complete Republican Ticket with a blank space for another full ticket with no designation at the head thereof. For the office of clerk the name of Carl Priess was printed on the ticket and I infer from the attached pasters appearing on some of the ballots that John Waltz was running on slips for said office.

Ballot No. 1 has a penciled circle or cipher within the printed circle at the head of the Republican ticket. I am constrained to the opinion that under the decisions of the Supreme Court of this State such method of marking must be deemed to invalidate the ballot on the ground that it is a "distinguishing mark." The statute regulating the marking of ballots clearly contemplates that no mark other than a cross shall be placed within the circle at the head of the ticket. Any other form or character of mark must, I believe, be regarded as prohibited. I call your attention upon this proposition to *Scott v. Glaser*, 102 Mich. 405. I believe it may be said in passing that this decision should be regarded as controlling with reference to practically all of the ballots submitted.

Ballot No. 2 has a cross in the circle at the head of the Republican Ticket and also has a number of crosses in the squares at the left of the spaces on the blank ticket. These marks have, of course, no bearing on the intention of the voter and certainly cannot be said to indicate it in any way. I believe accordingly that such must be treated as distinguishing marks and that the ballot must accordingly be rejected. Furthermore, slips bearing the names of John Waltz as a candidate for the office of clerk and Aaron Delauder, candidate for the office of treasurer, are pasted in blank spaces on the ticket opposite the offices of clerk and treasurer respectively. The names of the candidates printed on the Republican Ticket are not, however, erased. So far as the offices of clerk and treasurer are concerned, the ballot comes within the rule laid down in *Gurdon v. Cicott*, 16 Mich. 283, where it was declared that when the slip is placed on a ballot in such manner as to show two names for the same office the ballot should not be counted. It follows accordingly that

without reference to whether the crosses above referred to can be regarded as distinguishing marks, the ballot may not be counted for any candidate for the offices of clerk and treasurer.

Ballot No. 3 is in my opinion in compliance with the statute. Slips bearing the names of candidates for the offices of clerk and treasurer have been pasted on the ballot in such manner as to entirely cover the names of candidates for said offices that are printed thereon. This is without question the proper manner in which to affix a slip or paster. The fact that there is no cross at the head of the ticket nor before the names of the individual candidates does not invalidate the ballot under the holding of the court in *Johnson v. Board of Canvassers of Casnovia Village*, 101 Mich. 187. It should accordingly be counted as one vote for each candidate whose name is printed thereon including those candidates whose names appear on the pasters referred to.

Ballot No. 4 has a cross in the circle at the head of the Republican ticket; the name of the candidate printed thereon for the office of supervisor has been crossed out with a blue pencil and a slip has been pasted on the ballot having thereon the following "For supervisor—Oscar R. Musgrave." This slip is so placed that it is partly in the space opposite the designation of the office of supervisor and partly in the space opposite such designation for clerk. It seems to me that the intention of the voter who cast this ballot was clearly to substitute the name of Oscar R. Musgrave for that of Albert Patrick. I think that it should be treated accordingly and that the fact that the paster is partially in the space where the name of the candidate for the office of clerk is printed should not prevent the counting of the ballot as one vote for such candidate. While the name is partly covered by the paster, it would seem that it was not the intention of the voter to cross it off. I scarcely think, therefore, that even though the slip is not placed in the exact position that it should be, such fact should not prevent the counting of the ballot as one vote for Carl Priess for the office of clerk.

The ballot that is marked No. 5 has a cross in the circle at the head of the Republican Ticket and in the space opposite the title of the office of treasurer is pasted a slip having thereon the words "For Clerk—John Waltz." This slip is so affixed that it practically covers the name of the candidate for the office of treasurer that was printed on the ballot. It does not touch or in any way obscure the name of the candidate for clerk so printed. We may, of course, judge of the intention of the voter only by the manner in which he has indicated the same. I am impressed accordingly that the ballot should be counted as one vote for John Waltz for the office of treasurer and also as one vote for Mr. Priess for the office of clerk. This, of course, necessitates the ignoring, in canvassing the ballot, of the words "For Clerk" printed on the slip. It would seem, however, that the name of the office as printed on the ballot must be regarded as controlling and although Mr. Waltz may have been seeking the office of clerk, yet there was, of course, nothing to prevent an elector voting for him for the office of treasurer. The manner in which the slip is placed must, I think, be regarded as indicative of such an intent.

The same considerations and the same conclusions must prevail with reference to ballot No. 6, which is substantially the same as No. 5.

Ballot No. 7 has a cross in the circle at the head of the Republican Ticket. Pastors bearing the names of John Waltz, candidate for clerk,

and Aaron Delauder, candidate for treasurer, are pasted on the ballot in such manner as to cover the titles of such offices but not to efface the names of the candidate printed thereon. As the ballot stands, therefore, it bears the names of two candidates for the office of clerk and two for the office of treasurer. Insofar as such offices are concerned, it must be deemed to be within the rule laid down in *Gurdon v. Cicott*, above cited. While it should be counted as one vote for each of the other candidates whose names appear thereon, it may not in my opinion be counted for any of the candidates for the offices of clerk and treasurer.

Ballot No. 8 has a cross in the circle at the head of the ticket and the slips bearing the names of Mr. Waltz and Mr. Delauder are pasted thereon in such manner as to entirely cover the names of two of the candidates for constable. I believe that the same considerations must prevail here as in the case of ballots Nos. 5 and 6. In other words, we can regard such ballot only as indicating an intention on the part of the elector casting the same to vote for Mr. Delauder and Mr. Waltz for the office of constable. I believe that it should be so canvassed and should also count as a vote for each of the candidates whose names are printed thereon and not covered by the pasters, including Mr. Priess and Mr. Shady.

Ballot No. 9 has a cross in the circle at the head of the ticket and also has crosses in each of the squares before the spaces on the blank ticket. For the reasons suggested in discussing ballot No. 2, I am impressed that these marks must be regarded as "distinguishing marks" and that the entire ballot is thereby invalidated. It follows that it should not be counted for any of the candidates whose names appear thereon.

As per your request the sample ballots submitted are herewith returned. I trust that these suggestions will indicate to you my views upon each of the same.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

JUDICATURE ACT. Section 12015 C. L. 1897 not superseded by section 4 of Chapter 77 of the Judicature Act.

April 10, 1916.

Hon. William J. Galbraith, Prosecuting Attorney, Calumet, Michigan:

Dear Sir—Your communication of the 31st ult. received as follows:

"Section 4 Chapter 77 of the Judicature Act, page 468, reads as follows:

'Witnesses attending any justice's court shall be entitled to receive from the party requiring such attendance the following fees: For each day's attendance, \$1.00, for each half day \$.50, and ten cents for each mile necessarily traveled in going to the place of attendance by the usually traveled route.'

Section 12015 of the Compiled Laws reads in part as follows:

'That whenever any person is attending in court as a witness in behalf of the People of this state, upon request of the public

prosecutor or on a subpoena, or by virtue of any recognizance for that purpose, he shall be entitled to the following fees: * * * For attending in a justice court or on an examination, 75c for each day and 37½c for each half day, and for traveling at the rate of 10c per mile in going to the place of attendance, etc.'

Does section 4, Chapter 77 of the Judicature act repeal by implication section 12015 of the Compiled Laws? My impression is that it does not. However, as a difference of opinion has arisen, I would greatly appreciate a ruling by your department."

In reply thereto would say that Chapter 77 of the Judicature Act apparently relates to civil procedure entirely and not to criminal procedure, while section 12015 of the Compiled Laws of 1897 relates solely to criminal procedure. It is my understanding that the Judicature Act taken as a whole relates to civil procedure, etc., as is evidenced by its title and only affects criminal procedure incidentally.

I am, therefore, of the opinion that section 12015 of the Compiled Laws of 1897 is not superseded by section 4 of Chapter 77 of the Judicature Act.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-v-O

TAXATION. CITIES AND VILLAGES. City officers may be required to furnish the Auditor General with copies of resolutions, etc., changing the name of streets, the same being for the furtherance of the execution of tax laws.

April 10, 1916.

Hon. O. B. Fuller, Auditor General, Lansing, Michigan:

Dear Sir—Your communication of recent date received as follows:

"The county clerks are required by law to forward to the Auditor General copies of all court orders that vacate or alter recorded plats and this is of great assistance to us in locating property returned delinquent for taxes. In making an examination I find that in some counties fifty or more plats have been changed by order of the court and as we have had no knowledge of the changes, we have charged taxes to counties that perhaps should not have been charged. The above preamble leads up to the following question:

Can a law be enacted that would require the city and village clerks to forward to this department, copies of all resolutions of city or village councils that vacate or open streets or alleys or change the name of streets?

Actions of this nature by the council changes the form of description of platted property, and property is sometimes returned in such form that we cannot identify it from the plats we have on record.

The so-called home rule act for cities practically makes the

city charter the only law governing a city, and I am at a loss to know what law to amend to bring the desired results, or whether a specific act would cover the case.

I would like your advice on the matter as I would like to recommend to the Governor this change in the law."

In reply would say that cities, notwithstanding the provisions of the Home Rule Act, are still agencies of the State. This is especially true with reference to the tax laws and I do not think there could be any doubt as to the right of the legislature to enact such a law as you propose. In this connection your attention is called to Act 98 of the Public Acts of 1913 wherein a somewhat similar duty has been imposed upon cities and villages in the interests of public health.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

P-v-O

TAXATION. MUNICIPALITIES. The owner of a motor vehicle who does not register under Act 302 P. A. 1915 would be liable under the general tax law to be assessed for taxation.

April 10, 1916.

Mr. N. E. Dresser, Village Clerk, Litchfield, Mich.:

Dear Sir—I have your communication of the 1st instant as follows:

"We have in our town and township a number of men who own automobiles who say they are not going to take out licenses this year. If they do not have licenses can the automobile be put on the assessment roll both township and village?"

In reply thereto would say that ordinarily this Department would hesitate to advise you upon this proposition but inasmuch as a public question is involved in which the entire State is probably interested, I have made an examination of the question and will, therefore, advise you. Your attention is called to Act 302 of the Public Acts of 1915, the title to which is as follows:

"An Act to provide for the registration, identification and regulation of motor vehicles operated upon the public highways of this state and of the operators of such vehicles and to provide for levying specific taxes upon such vehicles so operated and to provide for the disposition of such funds and to exempt from all other taxation such motor vehicles so specifically taxed, registered, identified and regulated and to repeal all other acts or parts of acts inconsistent herewith or contrary hereto."

You will note that the act provides for the registration, etc., of motor vehicles *operated upon the public highways of this State*, and also that the title refers to the exemption from all other taxation of such motor vehicles so specifically taxed.

Section 2 provides in part as follows:

"Every owner of a motor vehicle *which shall be driven or operated upon the public highways of this State*, shall for each motor vehicle owned * * * cause to be filed * * * in the office of the Secretary of State a verified application for registration and shall also pay the tax as hereinafter provided * * *."

Section 7 provides in part as follows:

"Taxes to be paid prior to registration. The Secretary of State shall collect the following taxes: before registering a motor vehicle or motor vehicles, in accordance with the provisions of this act, which taxes shall be all the lawful tax collectible on such motor vehicle and shall exempt such motor vehicle from all other forms of taxation. The taxes shall be collected in accordance with the following schedule: * * *"

It seems clear that the act only applies to motor vehicles operated upon the public highways of this State and it further appears clear that the exemption from all other taxation can only be claimed when the tax has been paid for registration. That is to say, if the motor vehicle has not been registered and is not to be driven upon the highways, no exemption is granted by the act. It therefore follows that a motor vehicle upon which the tax provided by Act 302 has not been paid would still be subject to the general tax laws of the State.

The difficulty, however, is that the owner of the vehicle might at any time of the year apply for registration, pay the tax provided for in the motor vehicle law and then believe himself exempt from the general tax law. In such a case a question would arise as to whether the owner might not be entitled to his exemption and if so, leave a deficiency for which the municipality would become liable to the county and state. Upon this point I do not care to express an opinion at this time.

Very respectfully,

GRANT FELLOWS,

Attorney General.

P-v-O

CHIROPODY. An application for registration under the first subdivision of section 2 of Act 115 of 1915, may not be considered if presented after October 1, 1915.

April 11, 1916.

Dr. Beverly D. Harrison, Secretary, State Board of Registration in Medicine, Detroit, Michigan:

Dear Sir—I note from your letter of the 10th instant that a certain person has been practicing chiropody in the City of Detroit for several years past and that had he made application in due season he was entitled to be registered under the first subdivision of section 2 of Act 115 of the Public Acts of 1915. Said subdivision requires the presentation of proof prior to the first day of October, 1915; that the applicant had been engaged in the actual practice of chiropody for at least one year prior to the first day of September, 1915. The question now arises

as to whether the board may consider an application recently presented under this subdivision.

I am impressed from an examination of the statute that your question must be answered in the negative. In other words, the provision of the statute with reference to the making of application and the offering of proof under the first subdivision of section 2 must be regarded as mandatory and it is not competent for the board to consider applications presented thereunder subsequent to the first day of October, 1915. It is obvious that any other construction would practically nullify what would seem to be the intention of the legislature. The fact that discretion is given under the third subdivision of the section with reference to the recognition of registered chiropodists from other states cannot be deemed in my opinion to affect the first subdivision.

It scarcely seems to me that the constitutionality of the act can be assailed because of the provisions of the third subdivision of section 2. I believe that it was competent for the legislature to invest in the board the measure of discretion there indicated. Moreover, if such subdivision were deemed to be invalid, it can scarcely be said that the entire act would thereby be nullified. In other words, this subdivision is not such an integram part of the measure that it might not be separated therefrom if invalid leaving the rest of the act to stand.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

MOTHERS' PENSION. Certain phases of the amendment discussed.

April 13, 1916.

Hon. Edward P. Kirby, Judge of Probate, Grand Haven, Michigan:

Dear Sir—We are in receipt of yours of the 8th instant wherein you inquire:

“If a widow resident in this county moves out of this county into another county is she entitled to file a petition in this county asking for widow's pension, if she has the intention of simply making the other county her temporary residence, or would she, while residing in the other county, have to make application to the Superintendent of the Poor of that county and have the amount advanced to her charged back against this county?”

Would a widow who has a home worth \$1,400, or a home in which there is an equity in the widow of \$800 be entitled to receive allowance under the widow's pension act for the support of her children. In these cases, the widow has nothing except her home and is not able to do very much work.”

In reply, section 7 of Act 308 of the Public Acts of 1915 provides in part as follows:

“Provided, That if the mother of such dependent or neglected child is unmarried or divorced, or is a widow, or has been deserted

by her husband, or if her husband has been declared insane or is feeble-minded, epileptic or blind and is confined in a State hospital or other State institution, or is the wife of an inmate of some State penal institution serving sentence therein for crime, or an inmate of a hospital for the treatment of insane person who is confined therein for the purpose of being treated for insanity or other diseased mental condition and such mother is poor and unable to properly care and provide for said child, but is otherwise a proper guardian, and it is for the welfare of such child to remain in the custody of its mother, the court after investigation and report by the probation officer of the county, may enter an order finding such facts and fixing the amount of money necessary to enable the mother to properly care for such child, such amount not to exceed three dollars a week for each child. Thereupon it shall be the duty of the county treasurer of the county of which such child is a resident, to pay from the general fund of such county, to such mother at such times as such order may designate, the county so specified for the care of such dependent or neglected child until the further order of the court."

It is apparent from an examination of the above quoted provision that it was the legislative intent that relief if granted, should be at the expense of the county of which the child is a resident. Consequently, in answer to your first inquiry I would say that if the child in question is still a resident of your county then in such case application might properly be made to the Probate Court of your county for relief.

In answer to the second proposition, the determination as to whether the mother is "poor and unable to properly care and provide for said child" must rest in your discretion. Ordinarily, if the mother was in possession of funds or property available for use, then she would not be entitled to relief under the provisions of this act, but it cannot be said in all cases that a mother possessing an equity in a home worth \$800 or \$1,400 would not be entitled to the relief provided. This is especially true in view of the fact that the relief provided by this act was not primarily intended for the benefit of the mother but is intended for the betterment of the child and hence in certain cases the court might grant such relief even though the mother were the owner of a small amount of property.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

PUBLIC DOMAIN COMMISSION—FORESTRY LAWS. Substituting title of Public Domain Commission for Game and Fish Warden under Act 228 of 1915 as relating to Forest fire service.

April 14, 1916.

The Forester, Department of Agriculture, Washington, D. C.:

Re— S. C.— Compilation of Michigan.

Dear Sir—Your communication of the 17th ult., received as follows:

“In compiling the forestry laws of Michigan which were passed at the 1915 session, a difficulty has arisen in compiling Act No. 221, as it is not clear why the title, “State Game, Fish and Forestry Warden” is used therein, since that title appears to have been abolished in effect, by Act (No. 28), previously passed at that session, which transferred the duties of that office to the Public Domain Commission. Will you, therefore, be so kind as to advise me whether, wherever the State Game, Fish and Forestry Warden is mentioned in Act No. 221, it should not be made to read instead, Public Domain Commission. For instance, should not the first line of Section 2 therein, be transcribed as follows: ‘Sec. 2. The * * (Public Domain Commission) shall’?

I shall greatly appreciate your assistance in clearing up this point.”

In reply thereto would say that doubtless there is some confusion as to the authority of the State Game and Forest Fire Commissioner as distinguished from the authority of the Public Domain Commission in game and fish matters, growing out of the passage of Act number 28 of the Public Acts of 1915.

The title of the officer generally known in Michigan as the “Game Warden” was changed by Act number 28 of the Public Acts of 1915 from “State Game, Fish and Forestry Warden” to “Game, Fish and Forest Fire Commissioner” and as a practical matter the latter title should be substituted in all laws of this State where the former title is used. I presume it might be said that Act 221 of the Public Acts of 1915 was going through the legislative process at the same time that Act 28 was under-going passage and it was doubtless a legislative oversight that the title was not changed in Act 221 to conform to the provisions of Act 28. As a matter of fact there was no certainty that Act number 28 would be finally passed as it received the Governor’s veto and was passed over the veto of the Governor. I think there is no doubt that the Legislature did not intend to give this officer two different titles and that the title given in Act number 28 should prevail.

As to substituting the Public Domain Commission in Act 221 of 1915 for the “Game, Fish and Forest Fire Commissioner” or “State, Game, Fish and Forestry Warden” I should say that in some instances that would be proper and in other instances it would not be proper. For instance, it has been my ruling heretofore that under Act 28 of 1915, the Public Domain Commission is empowered to appoint the

Game, Fish and Forest Fire Commissioner and all his deputies and assistants, and is also given general control of the Department formerly known as the Game and Fish Department, becoming custodian of the records of that Department. However, it is equally plain that Act number 28 contemplates that the Game, Fish and Forest Fire Commissioner shall directly execute the laws of the State relating to fish, game and forest fire protection and in that respect acts in his own name and under his own authority.

Therefore, in compiling Act number 221 of the Public Acts of 1915 and the Act of which it is amendatory, I would suggest that no attempt be made to substitute terms as that would only lead to confusion. The matter is worked out in Michigan by the Public Domain Commission having a complete understanding with the Game, Fish and Forest Fire Commissioner as to the limitation of the authority of each and so far I think this policy has been satisfactory.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

HIGHWAY LAW—COUNTY ROAD COMMISSIONERS. Board of Supervisors may withhold part of compensation of Commissioners until a definite time.

April 14, 1916.

Mr. Arthur Culp, Prosecuting Attorney, Constantine, Michigan:

Dear Sir—Your communication of the 10th. inst. received as follows:

“The Board of County Road Commissioners of this County desires your opinion as to whether the Board of Supervisors can lawfully withhold a portion of the compensation for their services, until the meeting of the Board of Supervisors of the County, and at their request I make the inquiry.

The facts as I am advised are substantially as follows: The compensation of the Road Commissioners has been fixed at so much per day for the time actually employed as such.

The Board of Supervisors have authorized and instructed the County Clerk as an auditing committee to check over the accounts of these commissioners for their compensation monthly and to issue orders to each of them to the amount of $\frac{3}{4}$ of the amount of salary or compensation found due to each and to withhold the payment of the remaining $\frac{1}{4}$ until the next meeting of the Board of Supervisors.”

In reply thereto would say that the compensation of County Road Commissioners is provided for by section 8 of Chapter IV of the General Highway Law and the auditing of the accounts of the County Road Commissioners is provided for by section 25 of the same Chapter. There is nothing in these two sections that requires the payment of the compensation at any stated times, such as by the week or by the month. In the absence of any express requirement I am of the opinion that the Board of Supervisors would have the right to say how and when the Commission-

ers should be paid. I would, therefore, answer your inquiry in the affirmative.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

ARCHITECTS. Opinion of C. A. Lightner to State Board of Architects examined and approved. (2) Board not authorized to engage private counsel.

April 14, 1916.

Hon. Clarence H. Lightner, Detroit, Michigan :

Dear Sir—You have requested me to read for approval or disapproval your letter of February 7th, 1916, to Mr. George D. Mason, a member of the Board of Examiners in Architecture, in which you have advised the Board upon certain propositions arising under Act 120 of the Public Acts of 1915. Your letter is as follows:

“In pursuance with the suggestion of yourself and the other gentlemen on the Board of Examiners in Architecture, at our interview here Saturday morning last, I have examined with some care the several papers that you left with me, namely:—(1) a printed copy of the Act; (2) a copy of the letter addressed by the President of your Board to the Attorney General on December 28, 1915; (3) a copy of a statement in regard to the duties of an architect, etc. (a copy of which I assume was included in the letter to the Attorney General); and (4) the opinion of the Attorney General in answer to (2), which is dated January 12, 1916. I think I will retain these papers, for possible reference thereto, until I am advised of some other disposition that I should make of them.

I still think that any opinion your Board receives from me should, for the reasons stated at our conference, be regarded as informal, but I conclude, from the study that I have given the papers, that it would not be inappropriate for me to express in writing some ideas that may be of assistance to your Board.

(1) In the first place, I wish to commend very heartily the Attorney General's opinion. Evidently it was prepared by Mr. Pepper, of Mr. Fellow's staff, and, irrespective of the personal attention which the Attorney General himself may have given to the letter, I think it is an able opinion, and in no respect do I differ with its contents. I can understand that the members of your Board would have been more pleased with the opinion if it had directly answered the specific questions which were given in your letter of inquiry, but, even in this respect, I approve of the opinion of the Attorney General. The application of the law, as explained by the Attorney General's opinion, to specified cases, is a matter for your Board. I think that the opinion furnishes a sufficient basis upon which your Board can intelligently decide the specific cases as they may arise, but it would hardly help matters to at-

tempt to decide classes of cases upon statements of particular cases, as contained in your letter of inquiry.

(2) Perhaps I am particularly pleased with the explanation in the opinion regarding the definition of the word 'architect,' and the effect that the statute has upon one who is doing work that might be included in an architect's business, without becoming registered. If one is not registered he may not use the word 'architect,' or any similar expression in connection with his business. This seems to be the sanction, against improper practice of the profession, which is mainly relied upon by the compiler's of this statute.

(3) I now attempt to give what the opinion of the Attorney General lacks, namely, specific answers to the questions in your letter of inquiry, or rather my suggestions as to the meaning of the statute, and the Attorney General's opinion as applied to these questions, which may help your Board in solving particular cases:

(a) On page two of your letter you state under, 1st, cases of men who did not practice architecture on their own account, or as principals, but were employed as draughtsmen. It seems to me that such men are clearly not entitled to registration as architects (meaning of course in this connection without the examination provided for in the statute). On the other hand, the mere fact that an architect was doing drafting work in the office of other architects, and received pay therefor, does not deprive him of the right of registration. If he held himself out as an architect, and called himself an architect, and was employed professionally as an architect before the date set in the statute, namely, February 5, 1915, I think that he, if he makes the proper showing in his application, and if he is otherwise fit, is entitled to registration:

(b) On pages 2 and 3 of your letter you inquire whether engineers, civil, consulting, structural, etc., are entitled to registration. In my opinion the fact that a man has, previous to the date above mentioned, been engaged in the line of business indicated in this question, does not entitle him to registration as an architect. Of course, (as appears from the Attorney General's opinion) you could not exclude such a man from taking the examination, and if passing the examination, securing a certificate, but you are devoting your attention now solely to a registration without examination. On the other hand, I do not think that the expression in your letter is at all well chosen, namely, at the top of page 3, after asking the question, you say:

'The Board has considered the advisability of exempting from registration engineers who are members of architectural firms.'

I think that this expression is unfortunate. You have no right to exempt anybody from the provisions of this law. An applicant is either entitled to be registered, or not entitled to be registered. It is another question whether, if he continues the business that he was doing before February 5th, he is violating a provision of this statute, and the Attorney General's opinion, in my judgment, shows that an engineer doing the work herein suggested is not violating the statute, but he would be violating the statute if he held himself out as an architect, using the word 'architect,' or an equivalent, in connection with that business.

(c) On page 3 of your letter you inquire regarding 'Contractors and Architects.' To me it is plain that if an applicant under this class has in good faith been an architect, he is entitled to registration, although he may also have called himself a contractor. This class is perhaps the most difficult you have to deal with, because the whole purpose of the Act, and the tendency of the profession is to distinguish contractors from architects, and that distinction in the past has not generally prevailed, at least in this community. A fair and reasonable application of the Attorney General's opinion, and the purpose of the statute, to each particular case under this heading will be the most powerful influence in accomplishing this purpose.

(d) On pages 3 and 4 you inquire regarding real estate men and their employees. In particular instances, which you might be inclined to group under this class, it may well be that the individual is entitled to registration, but on the statement given I say that clearly real estate men who have not practiced architecture personally are not entitled to registration, and in general, I do not think that men who have been employed by real estate firms, and have done substantially no work, except for their employers, are entitled to registration. Upon this question I suggest your reading again what I say under (a) above.

(4) Perhaps it is to no purpose, but I cannot refrain from expressing to you my opinion that the Act is a good one; that except as to one or two uncertainties it is clear and well drafted, and that if the same is applied by your Board in the spirit which I have learned to know animates the members of the Board, it will be a distinct benefit to the profession, and therefore to the State.

(5) Although your Board seems to be in some doubt as to what the Attorney General means with reference to dates, it strikes me, after careful consideration, that the date before which applicants for registration (of course I mean without examination), should have been practicing architecture is February 5, 1915, and that the date from which the six months' period for registration begins to run is August 24, 1915. I say this with some confidence, although the pencil comments on the Attorney General's opinion would indicate that some one was not clear upon this question.

(6) A reading of the statute suggests to me that I mention the following items, merely to make certain that they have received your consideration:

(a) The requirement of section 7 that the Board adopt rules; and

(b) Sections 14 and 22, which provide for the fees to be paid.

I wonder whether, in your judgment, a man can become an architect upon the payment of \$20, or whether he must pay you \$30.

I am writing this letter in some haste, so that it may reach you possibly before adjournment, but I do not write it until I have given what I consider to be careful thought to the contents of all of the papers above referred to."

After reading your opinion carefully and comparing the same with my opinion to the same Board, dated January 12, 1916, I wish to state that I am of the opinion that you have correctly interpreted my views and the provisions of the statute as well. It was my idea that by giving the Board general rules for their guidance they would be able to apply those rules to particular cases which might arise.

You have further requested my opinion as to the right of the board to engage your services as attorney and pay you out of funds at the disposal of the Board.

Upon this proposition I can only advise you that there is nothing in the act itself which would authorize the Board to employ private council at public expense either out of the funds coming to the Board from fees or out of the general funds of the State. The Constitution and other laws of the State make the Attorney General the adviser of all State officers, boards, etc., and unless some special provision is made no State officer or board is authorized to use public funds to engage private counsel. In this connection, your attention is called to the opinion of the Supreme Court in *Cahill v. Board of State Auditors*, 127 Mich. 487.

Some question has arisen in the minds of the Board as to the proper interpretation to be put upon section 20. This section provides as follows:

"The Board of Examiners in lieu of all examination shall accept satisfactory evidence as to the applicant's character, competency and qualifications and satisfactory evidence that the applicant has been actually engaged in the practice of architecture under the title of architect on his own account, or as a member of a reputable firm or association prior to February 5th, 1915.
* * *"

You state that the Board has conceived the thought that the status of each applicant for registration without examination must be determined absolutely by reference to the status obtaining on February 5th, 1915, and that my former opinion meant this.

An examination of my opinion will disclose that what I determined in this respect was that in deciding the applicant's status reference should be had to February 5th, 1915, rather than the effective date of the act, there being some question as to which date should control. I did not mean to say, and did not say, that the applicant must show that he was an architect "on February 5, 1915." Section 20 does not make any such requirement but on the contrary all the applicant is required to show in that respect is that he had been actually engaged in the practice of architecture *prior* to February 5, 1915. There is a considerable difference between the term "prior" and the term "on." The term "prior to February 5th, 1915" merely means that a man cannot acquire the necessary status after February 5th. Of course, I do not think that a status entitling an applicant to registration without examination could be obtained where the applicant had not practiced, say for many years, prior to that date. I think the board would be justified in adopting some reasonable limit in that respect. Just what rule would be reasonable is perhaps difficult to say. Courts in attempting to fix a "reasonable time" usually take into consideration the character of the rights which have

accrued and which will be cut off and then endeavor to make the rule as free from harshness as possible. I should say that perhaps two years would be a proper prescription, but the board should determine this question in view of the general requirements of the profession.

I return herewith your files.

Very respectfully,
GRANT FELLOWS,
Attorney General.

P-v-O

MICHIGAN RAILROAD COMMISSION. No obligation upon the part of railroad companies whose rights of way parallel one another to construct a line fence between said rights of way.

April 15, 1916.

Michigan Railroad Commission, Lansing, Michigan:
Attention Mr. Cunningham.

Gentlemen—We are in receipt of yours of the 10th inst., enclosing your File No. 6192 with reference to the complaint of Charles F. McKenzie in behalf of Oscar H. Fox relative to the failure of the Michigan Central Railroad Company to maintain a line fence between its right of way and that of the Michigan Railroad Company. From the files submitted it appears that the right of way of the Michigan Central Railroad Company and the Michigan Railroad Company parallel one another west of the City of Battle Creek through the farm of Oscar H. Fox; that a farm crossing is, and has been, for some time, in existence across both of said rights of way connecting that portion of the Fox farm on the South side of the Michigan Railroad right of way with that portion on the north side of the Michigan Central right of way; that there is a line fence on the line separating the Michigan Central right of way from the farm of Mr. Fox as well as a line fence on the south side between the Michigan Railroad right of way and the premises of Mr. Fox but that there is no fence on the line between the rights of way of the Michigan Central Railroad and the Michigan Railroad. Complaint is made that the failure to provide a line fence between the two rights of way creates a dangerous condition and your Commission is requested to remove this condition by the ordering of a line fence. You request our opinion as to your authority in the premises.

In reply, Section 6294 of the Compiled Laws of 1897, the same being Compiler's Section 212 of the Laws relating to railroads, revision of 1915, provides, in part, as follows:

"Every railroad company formed under this Act or any former act, and every corporation owning or operating any such railroad, shall erect and maintain in effective condition of repair, fences on each side of the right of way to their respective roads, as hereinafter provided. A legal railroad fence shall not be less than four and one-half feet high, and shall be made of boards and posts in combination as follows: * * *"

A literal interpretation of the above quoted provision would seem

to indicate that it is the duty of a railroad company to fence both sides of its right of way and that such duty is absolute. We do not believe, however, that the statute in question should be given this construction. The purpose of the statute was two-fold, First, to prevent injury to livestock through the operation of trains; Second, to protect the traveling public and railroad employes from injury that might result in the operation of trains. The same section of the statute provides further:

"Convenient farm crossings shall also be constructed by any such railroad corporation across the right of way and track of its railroad, with the necessary gates or bars therefor, as the owner or occupant of the premises may elect, at the sides of the right of way, which said gates or bars shall be of sufficient width to admit the free and easy transportation of all farm machinery, including harvesters or binders, in form as the same are usually drawn, upon the application of the owner or owners of land lying upon both sides of such railroad track, the same being enclosed by exterior fences and being adjacent to such right of way. * * *

This particular portion of the section was enacted for the benefit and convenience of persons whose farms are crossed by railroad rights of way. Construing the various provisions of the entire statute together, it is apparent that in order to carry out the provisions of its enactment it must be construed in a way so as to afford the greatest measure of safety, and it can hardly be said that where two or more rights of way adjoin the construction of a fence on each and every dividing line would tend to tender the passage of stock across a private crossing more safe either to the live stock or to those riding upon the trains.

The Indiana statute with reference to railroad fences is very similar to the Michigan statute. It provides, in part,—

"That every railroad corporation operating any railroad into or through this State * * * shall erect, build, construct and thereafter maintain * * * on both sides of such railroad through the entire length, sufficient and suitable to keep and prevent cattle * * from getting on such road."

In the case of Pickett, et al. vs. Toledo, St. Louis & W. R. Co., 111 N. E. Rep. 434, it became necessary for the Supreme Court of the State of Indiana to construe this particular section of the statute. In that case the physical facts were identical with those under consideration. The gate upon one side of the fence had been left open and cattle had entered upon the right of way of one road and there being no line fence between the rights of way of the two railroads, had crossed over were killed by coming in contact with a train passing on the other line of track. Suit was brought against the railroad company upon the theory that it was negligent in that it had failed to provide a right of way fence upon one side of their line as was required by the laws of the State of Indiana. The lower court found for the defendant and the judgment of the lower court was affirmed upon appeal by the Supreme Court. In rendering judgment, the Court made use of the following language

"In discussing these fencing statutes by our own courts, and in many respects similar ones by the courts of other jurisdictions, it had been repeatedly announced that the object of such acts was to give the owners of animals compensation for stock killed or injured, and as a police regulation to secure as far as possible safety of the public travel and transportation. Keeping these evident objects of the statute in mind, we are unable to see how the construction and maintenance of the additional fence insisted upon by appellant would in any manner assist in carrying out these purposes. In fact, it could not serve any useful purpose, but, on the contrary, obstruction to the crossing, and consequently there could be no excuse for its presence, (citing authorities).

On examination of these and many other cases we find that the courts, in construing such statutes, have refused to adhere to a literal interpretation of them, and have departed more widely than we are required to do here to carry out the evident purpose of the Legislature and avoid the doing of a useless and unnecessary thing. While the statutes do not in express terms relieve railway companies from fencing their rights of way where such fences are evidently unnecessary for any purpose, yet we believe that such exceptions are necessarily implied where their uselessness clearly appears and their presence would only create additional inconveniences and burdens. We conclude, therefore, that to adopt the more rational construction of these statutes rather than a strictly literal one insisted on by appellant would meet the evident purpose and intent of the Legislature and necessitate the holding that under the undisputed facts of this case it clearly appears the appellee and the traction company had so constructed their fences as to meet the intent and purposes of the fencing statutes, and therefore appellee was under no duty to fence the south side of its right of way between such right of way and the traction company's right of way at the place in question."

We are inclined to the opinion that the same ruling would be made by the courts of this State if they were called upon to pass upon the question and would, therefore, say that it is not within the province of your Commission to order the construction of the division fence requested. You are also unquestionably right in the position you take as to the power of your Commission to order cattle-guards at this place. The same section of the statute that is referred to provides that "such right of way fences shall be provided with suitable connecting fences and cattle-guards at all highway and street crossings * * *." It is apparent from the wording of this portion of the section that no obligation is imposed upon railroad companies to maintain cattle-guards or connecting fences except at highway or street crossings and consequently it would not be within the power of the Commission to compel construction of the same at other places.

File is herewith returned.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

CRIMINAL LAW. Where a fine and costs imposed has been voluntarily paid by one found guilty of an offense before a Justice of the Peace, an appeal from the judgment will not lie to the Circuit Court.

April 15, 1916.

Hon. William R. Oates, State Game, Fish and Forest Fire Commissioner, Lansing, Michigan:

Dear Sir—You have referred to this Department a certain file with reference to a pending case in the County of Alpena. From the correspondence submitted it appears that William Lewis was arrested for a violation of the game and fish laws; that the offense was cognizable by a Justice of the Peace; that Lewis appeared before the Justice issuing the warrant and entered a plea of guilty to the charge contained in the complaint and warrant and thereupon the Justice found the said Lewis guilty and imposed a fine of \$15.00 and costs amounting to \$9.20; that thereupon the defendant Lewis, paid the fine and costs; that afterwards Lewis returned to the Justice Court and took an appeal to the Circuit Court for Alpena County and thereupon the said Justice returned the amount paid by Lewis in satisfaction of the judgment of the Court. You have requested our opinion as to the present status of the matter.

In reply you are advised that in our opinion, in view of the facts stated, the appeal was not properly taken and the cause will have no standing in the Circuit Court unless it appears that the fine was not voluntarily paid. The Michigan statute with reference to appeal from convictions by a Justice of the Peace is, in part, as follows:

“The person so charged with, and convicted by any such Justice of the Peace of any such offense, may appeal from the judgment of such Justice of the Peace to the circuit court: Provided, said person shall enter into a recognizance to the People of the State of Michigan, in a sum not less than fifty nor more than five hundred dollars, within ten days after the rendition of the judgment, with one or more sufficient sureties, conditioned to appear before said court on the first day of the next term thereof, and prosecute his appeal at said term to effect, and abide the orders and judgment of said court * * *.”

From an examination of this statute it might be assumed that an appeal will lie in any case if the defendant complies with the statutory provisions, but this same matter has been the subject of much litigation and the Court of last resort of various States, and the almost universal holding has been to the effect that a satisfaction of the judgment of the Court below if voluntarily made ends the litigation and there is nothing to be tried or determined in the appellate court. We think this reasoning is based upon sound logic, and that consequently the appeal should not have been permitted in the instant matter. It follows from this that the Justice should not have returned the fine and costs

paid by Lewis, and that the County may look to the Justice of the Peace for an accounting of the same.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-pi-O

DETROIT HOUSE OF CORRECTION. A person convicted of a second offense under Act 82 of 1909 and the County having no contract with the Detroit House of Correction, can not be sentenced to that Institution.

April 19, 1916.

Mr. Frank M. Burwash, Prosecuting Attorney, Mt. Pleasant, Michigan:

Dear Sir—You have recently requested an opinion from this Department as to whether or not persons convicted of a second offense under the provisions of Act 82 of the Public Acts of 1909 may be sentenced from Isabella County to the Detroit House of Correction, Isabella County having no contract with that Institution.

Section 2 of Act 82 of the Public Acts of 1909, provides, in part, as follows:

“Any person who shall be convicted a second time of being a disorderly person, the offense being charged as second offense, shall be punished by a fine not exceeding one hundred dollars and costs of prosecution, or by imprisonment in the county jail or in the Detroit House of Correction not less than thirty days nor more than three months, or by such imprisonment and by a fine not exceeding one hundred dollars and costs of prosecution.”

In view of the fact that the statute expressly provides for imprisonment in the county jail or in the Detroit House of Correction and as Isabella County has no contract with that Institution, I am therefore of the opinion that a Justice of the Peace of your County would not be authorized to sentence a person convicted of a second offense under the provisions of this Act to the Detroit House of Correction.

Regarding Chapter III, Section 13 of the Judicature Act which relates to probate registers, and requesting to whom the bond should run, I am enclosing herewith copy of an opinion given by this Department under date of February 16th, 1916, to Hon. Hugh A. Graham, Judge of Probate, Mt. Pleasant, Michigan.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

R-pi-O

COUNTIES. GENERAL FUND. Board of supervisors cannot appropriate for highway purposes out of the general fund of the county.

April 20, 1916.

Mr. A. W. Black, Tawas City, Mich.:

Dear Sir—Your communication of recent date received as follows:

"I desire to obtain, if possible, suggestions from your department as to a method by which certain moneys can be applied on good roads in this county; the facts are as follows:

Iosco County contains certain property of the Commonwealth Power Company, and the Commonwealth Power Company has paid into the treasury of Iosco County the sum of \$36,980, under the mortgage tax law, and under the statute, this money is placed in the contingent fund of the county. Iosco County has adopted the county road system and have a committee of three members, making up the superintendents of county roads, and the Board of Supervisors of this county desire to transfer a large portion of this money, so received, as mortgage tax, from the contingent fund of the county to the county road fund, and desire to use the same for good roads, under the supervision of the superintendents of county roads. There is no provision of the statute, allowing this transfer, as far as I know, but thought perhaps your department could suggest some plan by which the end desired could be arrived at. If a referendum should be necessary, I am satisfied the people would vote favorably on this proposition."

In reply thereto would say that after an examination of the matter I am of the opinion that the board of supervisors are without authority to appropriate for highway purposes out of the general fund of the county, but that any such appropriations must be provided for by taxation or by loans. I think any additional authority must come from the legislature.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-v-O

ADOPTED CHILDREN. The provisions of Section 9285 C. L. of 1897 as amended by Act 80 of 1907 applies to adopted children.

April 20, 1916.

Hon. Lucas M. Miel, Judge of Probate, Stanton, Michigan:

Dear Sir—You have recently requested that I give you my views with respect to a situation that has arisen in your County. As I understand the case a certain man who has recently died leaving property in Montcalm County executed a will several years ago by the terms of which all his property in the event of his death was to go to his widow. Subsequently a child was adopted; but the will was not destroyed or changed.

Section 9825 of the Compiled Laws of 1897, as amended by Act No. 80 of the Public Acts of 1907, makes provision for a child who is born after the making of his father's or mother's will, declaring in substance that such child, in the absence of express provision or intention to the contrary in the will itself, shall take as though the parent had died intestate. The question arises, in view of this provision and the provisions of the adoption law, as to whether a child who is adopted subsequently to the execution of a will is entitled to the same rights and privileges that are granted to a child who is born under such circumstances. While this Department does not, for obvious reasons, express its views on cases of this nature in which private rights only are involved, I believe that there can be no objection to my giving you my views under the circumstances suggested in your letter of the 17th inst.

The law relating to the adoption of children, Section 8780 Compiled Laws of 1897, declares that "such child shall thereupon become and be an heir at law of such person or persons, the same as if he or she were in fact the child of such person or persons." This provision is obviously very broad in its scope. It would appear that it was the intention of the Legislature to give such adopted child all the rights and privileges that a natural born child of the adopting parent or parents might have. The adoption proceeding does not affect the relatives of the adopting parents so as to entitle the child to inherit therefrom. The relation being a contractual one it can be deemed to affect only those who are parties and not strangers to the agreement. This was expressly decided in the case of *VanDerlyn vs. Mack*, 137 Mich. 146. However, in so far as the adopting parent and child are concerned, it would seem that the latter is granted the rights and privileges of a natural child of such parent. So viewed the conclusion would seem to follow that a child who is adopted after the making of a will by the adopting parent stands in no other or different relation than does a child born to such parent after the execution of the instrument. The reasons for the statutory provision with reference to the matter as contained in the Section of the Compiled Laws above referred to, would seem to be equally applicable in the case of an adopted child. In other words, the obligation on the part of the parent to make provision for the child is just as great in the one instance as it is in the other.

The recent decisions of the Court in *Ultz vs. Upham*, 177 Mich. 351, and *Fisher vs. Gardner*, 183 Mich. 660, seem to be in harmony with this view. In the former case the Court, speaking through Justice Stone, called attention to the language of the adoption statute and indicated clearly that no narrow or technical construction should be placed thereon. In the latter decision Justice Brooks stated that an adopted child takes "as a statutory lineal descendant, and as lawfully in the line of descent as if he were placed there by birth." My attention is called to no decision of the Supreme Court of this State upon the identical proposition that you have suggested. It seems to me, however, that these two cases may be regarded as indicative of the interpretation to be given to the statutory provision involved.

The Courts of other States are not in harmony with reference to the interpretation of statutes practically identical in substance with those of this State along this line. A number of different decisions are referred to in the note to *Morse vs. Osborne*, 30 L. R. A. (N. S.) 914. In support

of the views above suggested are the decisions of the Supreme Courts of Illinois, Iowa and Wisconsin in the following cases: Plannigan vs. Howard, 65 N. E. 782 (59 L. R. A. 664; Hilpire vs. Claude, 80 N. W. 332 (46 L. R. A. 171); Glascott vs. Bragg, 87 N. W. 853 (56 L. R. A. 258); Sandon vs. Sandon, 101 N. W. 1089. The Supreme Court of Indiana, in Davis vs. Fogle, 23 N. E. 860 (7 L. R. A. 485), reached a conclusion that apparently is not entirely in accord with the holdings above cited. It appears, however, that the language of the statute construed differed materially from the provisions passed on by the Illinois, Iowa and Wisconsin Courts. It appears that an expression was used in the Indiana law that might logically be construed as excluding adopted children. The same situation obtained in the case of *In re Comassi*, 40 Pac. 15, (28 L. R. A. 414) where the Supreme Court of California held that an adopted child was not within the scope of a statutory provision respecting the revocation of wills in certain instances. *Morse vs. Osborne*, supra, is apparently in harmony with the Indiana and California decisions. An examination of these cases, however, shows that the statutes under consideration were materially different from those of this State that are here involved. Rather our provisions along this line are most nearly similar to the laws of Illinois, Iowa and Wisconsin that were passed on in the cases above cited. While of course the law of this State can not be deemed to be settled until the Supreme Court has passed squarely on the point involved, I am impressed that the weight of authority and of reason support the conclusions indicated above.

It is my opinion accordingly that the adopted child in the case to which you refer stands in the same position as would a natural born child of the adopting parent.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

HIGHWAY LAW. A Good Roads District may not turn over to the Townships in such District money raised by taxation for district road purposes; nor may it pay a reward for highway improved by such townships.

April 20, 1916.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Michigan:

Dear Sir—Your letter of the 17th inst. enclosing copy of communication addressed to you by Mr. Henry Herman Chairman of the Board of Good Roads Commissioners in one of the Districts of Tuscola County, is before me. Mr. Herman raises the question as to whether or not his Board may pay the various Townships in the District the sum of five hundred dollars per mile for State reward roads constructed by such Townships. As I understand the situation money has been raised in the Good Roads District in accordance with Chapter III of the General Highway Law. Such District, however, has no machinery with which to construct the roads, while the various Townships concerned own such equipment. It is also stated that the amount raised in the District is

not sufficient to construct the roads desired to be improved. Under these circumstances it is the view of the District Commissioners that more good roads will be constructed if the plan indicated can be followed.

The provisions of the Highway Law relating to good roads districts do not seem to contemplate that money raised thereby may be expended other than for the specific purposes pointed out, that is, for the construction and improvement of highways under the control of the authorities of such District, I am impressed that the provisions with reference to the raising of money and the expenditure thereof must be strictly construed and that the Board of Good Roads Commissioners may take no action along this line that is not authorized by the statute, either expressly or by necessary implication. Such being the case it is my opinion that the plan proposed may not be followed out. In the final analysis it would amount to the payment by the District of a stated reward for each mile of highway improved, in addition to the State reward. This Department has heretofore held that it was not competent for a county to pay such reward and the reasons for such holding are equally in point in determining the powers of good roads districts in this respect.

Pursuant to your request, I am returning herewith Mr. Herman's letter to you.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O—enc.

POOR DEBTORS' ACT. Application for discharge may not be made until there has been an actual confinement in the County jail for the prescribed period.

April 20, 1916.

Mr. Earl L. Burhans, Prosecuting Attorney, Paw Paw, Michigan:

Dear Sir—I have before me your letter of the 15th inst. and note therefrom that a certain person has been confined in your County jail pursuant to Section 5906 of the Compiled Laws of 1897. Said section provides that: "Any man who shall have been imprisoned six months for having failed to comply with the order of the Circuit or Superior Court, as provided in this Chapter, shall have the benefit of the laws for the relief of poor prisoners committed on execution for debt. In view of the provisions of the statute the question arises as to whether or not such person must wait until the expiration of the six months period before starting proceedings to be discharged. You have asked that I give you my views upon the matter.

It seems to me that the law can be construed in no other way than as requiring one who is imprisoned pursuant to this section, or pursuant to the statutory provisions relative to imprisonment for debt in certain cases, to remain in confinement for the full period prescribed in the particular instance before taking steps to be relieved. It will be noted that Section 5906 does not make the laws for the relief of poor prisoners available until a man shall have been imprisoned for six months. Thus the

letter of the statute would seem to exclude any interpretation other than as above suggested. The decisions of the Supreme Court involving these various provisions seems to support, by implication, this view. I call your attention particularly to *Funke vs. Hurst*, 119 Mich. 182.

The language of Section 9702 of the Compiled Laws of 1897 is also significant. In accordance therewith the application for discharge from imprisonment may not be made until after the applicant has been in prison for a specified period of time. In other words, the privilege granted by the statute may not be invoked until after there has been an actual confinement in the County jail for the prescribed period. Until a prisoner has been so confined he has no standing in discharge proceedings. In answer to your specific inquiry, therefore, I am constrained to the opinion that the person referred to may not make application for relief under the poor debtors' Act unless he has been imprisoned the full period of six months prescribed by Section 5906.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

HIGHWAY LAW. Under Section 4 of Act 175 of 1903 forestry reserve lands are to be taken into account in determining the assessed valuation of the Township within the meaning of Chapter XIV of the Highway Law.

April 20, 1916.

Mr. Hiram R. Smith, Prosecuting Attorney, Roscommon, Michigan:

Dear Sir—I note from your letter of recent date that one of the Townships of your County desires to issue bonds for highway purposes, in accordance with the provisions of the General Highway Law. Section 8 of Chapter XIV of said law limits the amount that may be so borrowed to "not exceeding five per centum of the assessed valuation of such township." It appears that there is a considerable acreage of forestry reserve land in the Township in question and that if the assessed value thereof is taken into account bonds in the sum of ten thousand dollars may be authorized. On the other hand if the forestry reserve is to be excluded in computing the assessed valuation as such term is used in the section of the Highway law above referred to, then the Township could not bond for the amount indicated.

Act 175 of 1903, which measure provided for a forestry reserve, exempted all such lands from taxation except for the maintenance of schools and roads. It thus appears that under the express provision of the statute, taxes for highway purposes may be levied on the forestry reserve land in the Township to which you refer. It would clearly seem also that in case of a bond issue taxes might be imposed on such land for the purpose of raising money to retire the obligations at maturity. Such being the case I am impressed that the value of this land should be taken into consideration in determining the aggregate assessed valuation for the purposes of Chapter XIV of the Highway Law. Undoubtedly the purpose of the limitation imposed by Section 8 of that chapter is to prevent the imposing upon property of a burden greater than as indi-

cated. Bearing this purpose in mind it is obvious that all the property on which such burden may be placed must be considered in determining the amount that may be raised.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

HIGHWAY LAW. Work calling for an expenditure of more than \$500 should be advertised and the township board should not decide to let the work by day labor until bids have been received and passed on.

April 20, 1916.

Mr. Charles Reynolds, Highway Commissioner, Harrison, Mich.:

Dear Sir—I note from your letter of the 17th instant that your township has raised money for the improvement of highways by means of a bond issue and that some difference of opinion exists as to the exact method that should be followed in making the desired improvements. It is the desire of certain members of the township board to have the work done by the so-called "day labor system;" while other members are inclined to the opinion that contracts should be let. It appears that the township board last December directed you as highway commissioner to proceed under the former method but that no record of such action was taken. Neither does it appear that any money has been expended except for the purchase of machinery and material.

Section 3 of Chapter XII of the general highway law applies to the situation that you have suggested. In accordance with this section if work to be done calls for the expenditure of an amount greater than \$500, the tentative plans must be submitted to the township board and approved thereby. Thereupon it is the duty of the commissioner to advertise for sealed proposals for the doing of the work. If upon the coming in of such bids, it is deemed desirable not to let the contract to any one, the township board may decide to do the work by day labor. In such event the board must take formal action setting forth the reasons in writing for not letting the work by contract, and such written statement together with plans and specifications and all bids received must be filed in the office of the township clerk. I am impressed that the procedure as outlined by the statute should be observed in all cases; and that accordingly, in the specific case that you have stated, bids should be advertised for and then the board should take action thereon.

Trusting that these suggestions will indicate my views to you, I am,

Very respectfully,

GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. County road commissioners appointed by the boards of supervisors take office on the first of January following their appointment.

April 20, 1916.

Mr. John Jones, Prosecuting Attorney, Ontonagon, Michigan:

Dear Sir—I have before me your letter of the 18th instant and note that your county is operating under the provisions of the county road system. It appears, however, that there are more than twenty surveyed townships in the county and that the commissioners are appointed by the board of supervisors. Heretofore such appointments have been made in the spring, each commissioner assuming office on the 1st of May following his appointment. Were it not for the amendments to the county road law enacted at the last session of the legislature, the term of one of the commissioners would have expired this spring and his successor, in accordance with the established system, would be chosen at the April meeting of the board of supervisors. The question arises as to the effect of the amendments made by Acts 75 and 181 of the Public Acts of 1915, with respect to such term of office.

It occurs to me that the law in its present form, as amended by the acts referred to does not contemplate that any county road commissioner shall assume office at any time other than the first day of January. It is significant to note that in the first instance, after a county has adopted the provisions of Chapter IV, if commissioners are appointed, they shall hold office only until the first day of January of the year in which the following session of the legislature is held. In counties where such officers are elected, such election must be had in November and each commissioner so chosen takes office the following first of January. By analogy I think that the same condition must obtain where the board of supervisors exercises the privilege of appointing the county road commissioners. It is my opinion accordingly that the commissioner who is appointed to succeed the member of the board whose term expires within the year will not be entitled to take the office until the first of next January and that in consequence the present incumbent is entitled to hold over until that time. Any other conclusion would seem to be inconsistent with the positive provisions of the statute.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

JUSTICE OF THE PEACE. A candidate for the office of Justice of the Peace who does not possess the statutory qualifications at the time of his election can not hold said office.

(2) Where a majority candidate is disqualified from holding office a minority candidate can not be declared elected.

April 21, 1916.

Mr. F. J. Bell, Seney, Michigan:

Dear Sir—You have recently requested an opinion from this Department upon the following statement of facts: You state that at the annual

Township election Mr. J. V. Kinsey was on the ballot for Justice of the Peace and received thirty-three votes. Mr. J. E. Pepple whose name was written in received three votes. It now develops that Mr. Kinsey was not an elector in the Township at the time of his election. You ask to be advised, *First*, If Mr. Kinsey's disability is removed before the time he takes office will he be eligible to hold the office of Justice of the Peace? *Second*, If Mr. Kinsey is ineligible can Mr. Pepple be declared elected and qualify for said office? *Third*, If neither party can qualify for the office is there a vacancy in said office?

Section 2382 of the Compiled Laws of 1897 which provides for the qualification of Township offices provides as follows: "No person except a citizen of the United States and an elector as aforesaid shall be eligible to any elective office contemplated in this Chapter." The question as to whether or not Mr. Kinsey can hold this office turns on the proposition as to whether the word "eligible" as used in this Section has reference to eligibility at the time of election, or at the time of taking office.

In Black's law dictionary the word "eligible" is defined as "capable of being chosen, competent to hold office;" In Bouvier & Anderson, it is said: "This term relates to the capacity of holding, as well as that of being elected to, an office;" In Abbott's "The term 'eligible to office' relates to the capacity of holding as well as the capacity of being elected;" 19 Am. & Eng. Enc. Law, 397, "capable of being chosen," implying competency to hold the office if chosen;" Worcester, "legally qualified," "capable of being chosen;" Webster "that may be elected," "legally qualified to be elected and to hold office," "fitted or qualified to be chosen or elected," "subject to election," "forming a matter of choice," "requiring selection."

In view of the foregoing definitions of the term "eligible" I am of the opinion that Mr. Kinsey is not entitled to qualify for the office of Justice of the Peace, he not being eligible to hold such office at the time of his election.

In answer to your second inquiry I would respectfully call your attention to the case of *People vs. Molitor*, 23 Mich. 341, in which case the Court held that no one can be elected at a popular election unless there are more ballots cast for him than for any other person, and that a minority candidate can never be allowed to maintain his title. I am, therefore of the opinion that your second question should be answered in the negative.

In answer to your third inquiry would respectfully call your attention to Section 15 of Article VII of the Constitution which provides, in part, as follows: "There shall be elected in each organized Township not exceeding four Justices of the Peace, each of whom shall hold the office for four years and until his successor is elected and qualified."

In accordance with the foregoing provision of the Constitution there would be no vacancy in the office of Justice of the Peace and the present incumbent of said office would hold the same until his successor was elected and qualified.

Trusting this will furnish you with the desired information, I remain,
Respectfully yours,

GRANT FELLOWS,

Attorney General.

R-pi-O

OSTEOPATHS. Osteopaths are not physicians within the meaning of the statutes requiring an examination and report by a physician to the Probate Court on insane, afflicted adult and afflicted children under these Acts.

April 21, 1916.

Hon. William H. Murray, Judge of Probate, Ann Arbor, Michigan:

Dear Sir—You have recently asked to be advised as to whether or not the term “physician” as used in the various statutes of this State providing for an examination and report on insane, afflicted adult and afflicted children includes an osteopathic physician.

In answer to your inquiry would say that it has been the holding of this Department that an osteopathic physician cannot practice medicine within the meaning of Act 237 of the Public Acts of 1899 or Acts amendatory thereto. To this effect see the Attorney General's Report for the year 1913, on page 532.

The practice of osteopathy is regulated by Act 305 of the Public Acts of 1913, which Act expressly recognizes the distinction between the term “physician” as ordinarily used, and the term “osteopath” in as much as it speaks of them as “osteopathic physicians.” I am, therefore, of the opinion that the term “physician” as used in the statutes referred to by you does not include an osteopathic physician, said term being confined exclusively to those who are authorized to practice medicine within the meaning of Act 237 of 1899.

Respectfully yours,

GRANT FELLOWS.

Attorney General.

R-pi-O

TOWNSHIP TREASURER'S BOND. The sureties thereon should be residents of the county.

April 24, 1916.

Mr. F. E. Skeels, Wolverine, Michigan:

Dear Sir—I note from your letter of the 19th instant that the bond of the township treasurer has been presented to you as supervisor for your approval and that some of the sureties thereon are not residents of Cheboygan County. You ask to be advised as to whether or not it is proper for you to approve the same.

It occurs to me that under the provisions of section 2357 and 2358 of the Compiled Laws of 1897, the sureties on the bond of the township treasurer should be residents of the county in which such township is situated. The first section declares that the removal of the sureties from the county shall authorize the county treasurer to require that a new bond be given to him; while the subsequent section lays down practically the same proposition with respect to the bond given to the township. Quite possibly if the bond would be sufficient without the signature of the non-residents of the county it might be approved. In other words, such signatures might be disregarded. But if the bond

would be insufficient without them, I am inclined to the opinion that it should not be approved.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. Compensation of commissioner fixed by Act 248 of 1915.

April 24, 1916.

Mr. Emerson R. Boyles, Prosecuting Attorney, Charlotte, Michigan:

Dear Sir—Under date of the 19th instant you ask my views as to whether it is competent for the electors at an annual township meeting to increase the compensation of the highway commissioner beyond the amount fixed by Act 248 of 1915. In reply I would say that the legislature having spoken on the subject and not having given to the electors any authority to take such action, the same must be deemed to be unwarranted. Quite possibly the electors were misled by the provisions of section 14 of Chapter II of the general highway law, which in terms gives to the township board the right to fix the compensation of the commissioner and of overseers. Possibly, the action taken was intended to be in the nature of a recommendation to the board as to what should be done under this section. However, the power so given to the township board is, of course, subject to the legislative control and inasmuch as the legislature has itself fixed such compensation, the matter is thereby fixed. Section 4 of Chapter XIII of the highway law seems to recognize the existence of the statute prescribing the compensation of various township officers including the commissioner. Being subsequent in the act to section 14 of Chapter II, it must be regarded as modifying such section. In any event, the act of 1915 must be viewed as controlling and as fixing the compensation of the township officers therein mentioned beyond the power of any local authority to either increase or diminish.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

INCOMPATIBILITY. The offices of Deputy State Oil Inspector and County Road Commissioner are not incompatible.

April 24, 1916.

Mr. Earl L. Burhans, Prosecuting Attorney, Paw Paw, Michigan:

Dear Sir—I note from your letter of the 22nd inst. that the Board of Supervisors at their recent meeting elected three County Road Commissioners, the provision of the County Road Law having been adopted

by the electors at the Spring election. One of the officials so chosen is at the present time holding the office of Deputy State Oil Inspector. It appears that some question has arisen as to his right to hold both offices. On behalf of the Board of Supervisors of your County you have asked that I give you my opinion in the matter.

There is no positive provision of the Highway Law nor of the statute providing for the appointment of Deputy State Oil Inspectors, to which my attention is called, that forbids the incumbent of either of said offices from holding the other also. Neither does it occur to me that any rule of public policy of the State would be violated by permitting such simultaneous holding. It scarcely seems that the duties are conflicting to such an extent as to render them incompatible in fact. I see no reason, therefore, to prevent the person to whom you refer from holding the two offices and performing the duties of each.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

SCHOOL LAW. A Board of Trustees of a rural high school organized under Act 144 of 1901 may not construct a larger building than is needed for such a school in order to rent out a portion thereof for the use of the grades of a district.

April 24, 1916.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Capitol:

Dear Sir—You have recently requested the views of this Department as to the power of a Board of Trustees of a rural high school organized pursuant to Act 144 of 1901, as amended, to construct a school building and rent a portion thereof to a local graded school district. As I understand the situation, in the particular instance which has given rise to the question such graded school district has not a suitable school building of its own; and if possible it is desired that the Board of Trustees of the rural high school shall construct a building that will not only provide sufficient room for the high school purposes, but also for the grades of the district.

Subdivision 5 of Section 4 of the Act cited authorizes the Board of Trustees to "build and furnish school houses." This provision must, of course, be interpreted in connection with the other provisions of the Act and the purpose to be accomplished thereby. So viewed it may be regarded as authority for the construction of such a building as may be necessary for the maintenance of a rural high school. It does not occur to me, however, that it can be extended beyond this point. In other words, the language in the statute would not justify the construction of a building not necessary for the purpose of the Act. It would clearly be outside the authority of the Board of Trustees to build a separate school house for the use of the graded district; and I am impressed that the erection of a single building of such dimensions as would accommodate not only the high school but the grades of the district as well would be in excess of the authority conferred by the Act. In other words, the power of the Board of Trustees is limited to the construction and main-

tenance of such a building, and only such a building as is necessary and proper for the rural high school.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

HIGHWAY LAW. The limitation as to taxation prescribed by Section 26 of Article VIII does not apply to townships.

April 24, 1916.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Mich.:

Dear Sir—I have before me your letter of the 22d inst., enclosing copy of an opinion rendered by Mr. Walter McNiel of Detroit, with reference to the power of townships to issue bonds for the purpose of raising money for the improvement of highways. This opinion has apparently been rendered to a firm that deals in such securities; and I note that there has been some difficulty in disposing of township road bonds because of the interpretation placed by Mr. McNiel and other attorneys upon Section 26 of Article VIII of the State Constitution. You have asked that I give you my views upon the matter.

The section of the Constitution referred to empowers the Legislature to provide for a system of constructing, improving and maintaining highways throughout the State. In view of the questions that have been raised it may be well to set out the entire section herein. It is as follows:

"The Legislature may by general law provide for the laying out, construction, improvement and maintenance of highways, bridges and culverts by counties, districts and townships; and may authorize counties or districts to take charge and control of any highways within their limits for such purposes. The legislature may also by general law prescribe the powers and duties of boards of supervisors in relation to highways, bridges and culverts; may provide for county and district road commissioners to be appointed or elected, with such powers and duties as may be prescribed by law; and may change and abolish the powers and duties of township commissioners and overseers of highways. The legislature may provide by law for submitting the question of adopting a county or district road system to the electors of the counties or proposed districts, and such road system shall not go into operation in any county or district until approved by a majority of the electors thereof voting on such question. The tax raised for road purposes shall not exceed in any one year three dollars upon each one thousand dollars of assessed valuation for the preceding year."

The part underscored was incorporated in the Section by the Constitutional Convention of 1908. The corresponding provisions of the prior Constitution are found in Section 49 of Article IV thereof. It was provided therein that for the maintenance of county roads an annual

tax not exceeding \$2.00 upon each one thousand dollars of assessed valuation of the County for the preceding year might be levied. It will be noted that the final sentence of Section 26 of Article VIII of the present State Constitution is practically identical with the corresponding provision as found in the Constitution of 1850 except that the limit is raised to three dollars per thousand and the words "of the County" are omitted following the reference to assessed valuation. Reference to the proceedings of the Constitutional Convention leave no doubt but that it was the intention of the framers of that instrument that such limit had reference to the raising of money by counties, rather than by Townships. It is said, however, that we must construe the provisions of the present State Constitution literally as the same are expressed, without reference to what the framers of the instrument may apparently have intended. By implication the argument would appear to go farther than this and forbids a reference to the provisions of the law as it existed when the present Constitution was framed for the purpose of ascertaining and explaining the intention of the Convention that framed the instrument, and also of the electors who adopted it as the fundamental law of the State. I am unable to agree with this view. The fundamental rule of construction, either of a statute or of a Constitution, is to ascertain the intention of the law making body. For such purpose the Courts have repeatedly declared that recourse may be had to prior legislation upon the subject and particularly to provisions of law superseded by the particular provision in question. Because of the manner in which the various provisions of section 26 are grouped together, I am impressed that it is eminently proper that such recourse should be had in this case. In other words, I do not think that we are limited to a fair consideration of the language that we find in this section; nor that we are in duty bound to interpret it without reference to the obvious intention of the Constitutional Convention and of the People that ratified its work. Had the language used in the Constitution of 1850 been retained there would, as stated by Mr. McNiel, be no chance for a difference of opinion along this line. That it was intended to give to the final sentence of section 26 precisely the same scope and application as had the corresponding provision of the prior Constitution that was superseded thereby, is frankly admitted. The sole difference of opinion is really as to the rules of construction to be applied. If we may go outside of the language of the section itself and refer to the legislative history of the provision it is admitted that the view above suggested is the correct interpretation; and as indicated I am impressed that we may and should do so.

The fact that the provision containing the limitation follows a clause relating to the County and District Road system, and making no mention of Townships may be taken to imply that the latter subdivisions were not intended to be affected by such limitation. Even were we limited therefore in our investigation and examination of the provisions of this Section, I am not prepared to say that the concluding sentence must necessarily be regarded as embracing Townships within its scope. Rather it might be urged with considerable plausibility, in my judgment, that the same reference was contended as in the preceding sentence. Such being the case it can scarcely be said that the language of this section is so clear and free from ambiguity that we may not refer to the provi-

sions of the prior Constitution superseded thereby, and to the proceedings of the Constitutional Convention, in order to ascertain the real purpose and intent. Under any aspect of the case I do not think that any view other than as above suggested can be upheld without doing violence to the cardinal rule of construction, that is, that the intention of the makers of the law shall be ascertained and if possible carried out.

It also occurs to me that some question may be raised as to whether or not the limitation imposed by this section of the Constitution with reference to the raising of money for road purposes applies to taxes levied to pay the interest and principal of county obligations, even though the money raised by the sale of such obligations has been used for highway purposes. However, in view of the conclusion above suggested I do not think it necessary to discuss this phase of the matter at this time. If bonds may be legally issued by any municipality or political subdivision of the State it would seem to follow from the decision of the Supreme Court in *Hammond vs. Place*, 116 Michigan 628, that the payment thereof can be compelled even though the prescribed tax limit is exceeded. Undoubtedly the principle of that decision is applicable in the instant case.

Pursuant to your request I am returning the opinion of Mr. McNiel.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

POOR PERSONS. Compensation of physician under Act 267 of 1915 in a direct charge upon the County.

April 26, 1916.

Hon. Clark E. Higbee, Judge of Probate, Grand Rapids, Michigan:

Dear Sir—Your communication of the 17th inst. received in which you request my opinion as to whether a physician appointed by the Probate Judge to make an examination under Act 267 of the Public Acts of 1915 should receive his pay out of the general fund of the County or out of the general fund of the State.

In reply thereto would say that the purpose of Act 267 of 1915 is to provide free hospital service and medical and surgical treatment for persons afflicted with a malady or deformity which can be benefited by hospital treatment who are unable to pay for such care and treatment et cetera. The investigations and orders are made through the medium of the Probate Court. Section 8 of the Act provides:

"The county from which any such patient is sent under any such order and decree of the probate court shall be liable for all expenses incurred under the provisions of this Act, and it shall be the duty of the State to collect from the treasurer of such county an amount of money sufficient to reimburse the State for all money expended from the general fund of the State in carrying out the provisions of this Act."

A reading of the entire Act in conjunction with Section 8 above quoted, is convincing that the Legislature did not intend the State to bear any portion of the actual expense. Section 7, to which you refer in your letter, provides, in part, as follows:

"And the physician appointed by the probate judge to make such examination and report shall receive therefor the sum of five dollars, together with his necessary expenses incurred in making such examination, which said charges for services and expenses and all expenses incurred in conveying such patient to and from the University Hospital shall, when approved by the Judge of Probate ordering such services, be paid by the treasurer out of the general fund."

In view of the provisions of the Act and of its general provisions and the specific provisions of Section 8, I am of the opinion that the general fund referred to in Section 7 means the general fund of the County. It would serve no good purpose to construe the provisions otherwise inasmuch as if this charge were taken care of out of the general fund of the State it would be the duty of the Auditor General to charge the same back upon the County.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

INSURANCE LAW. MUTUAL INSURANCE COMPANIES. By-laws relating to forfeitures and assessments and recovery therefor considered.

April 26, 1916.

Mr. Burr B. Lincoln, Lansing, Michigan:

Dear Sir—Your communication of the 20th instant received written by you in behalf of a special committee of the State Grange Executive Committee, and in which you have asked several questions affecting certain mutual fire and cyclone insurance companies operating in this State. Your first question is as follows: A mutual cyclone company has the following by-law:

"The annual assessment of this company shall be due and payable the first day of October of each year, and the assessment roll in the hands of the local director shall be notice to the policy holders of the amount of the assessment due. To all assessments not paid during the month of October, there shall be added ten per cent for the month of December and an additional five per cent for each month thereafter until paid."

You desire to know whether the provision of this by-law for the additional percentage is valid.

The by-law, as I understand, was adopted in 1914, and no question is raised as to the manner in which the by-law was adopted by the company. It is further understood that this mutual company has the usual statu-

tory authority to adopt by-laws not inconsistent with the constitution and laws of the State and the charter of the company itself. So the question is, therefore, whether a mutual company in this State has any authority to exact a pecuniary penalty of its members for failure to pay assessments. It is well settled in this State that the members of a mutual corporation are bound by the by-laws of the company; *Douville v. Farmers Mutual Fire Insurance Co.*, 113 Mich. 158. Therefore, the members of the company would be bound by this by-law unless it is in contravention of the laws of the State, in which case it would be invalid. Under ordinary circumstances, the members of a mutual insurance company bear a dual relationship to each other,—that is, they are both insurers and insured. The members are bound together to meet each other's losses and to enjoy the profits, if any. It is for this reason that ordinarily any rule or by-law which the members may agree upon becomes binding; but even this rule has its limitations and the company can not impose any rule upon its members which would be contrary to public policy or the laws of the State.

The provision of the by-law with relation to the additional penalty may be looked upon perhaps in two ways; first, a self-imposed rule of damages to the company, similar to stipulated damages in other contracts; or second, as interest on the amount due.

On the first of these two theories such a by-law was sustained in *People's Mutual Fire Insurance Co. v. Groff*, 154 Pa. St. 200, where it was said:

"Twenty-five per cent additional is either to be regarded as a conventional sum added by way of liquidated damages to indemnify the company and its paying members against the laws, incapable of being otherwise ascertained, resulting from the tardiness or default of a member neglecting to pay within the stipulated time, and therefore lawful on the principle laid down in 12 Pa. 97; 48 Pa. 450; 54 Pa. 329; 71 Pa. 180, and other cases. Or it is to be treated as a reservation of a commission for collection, similar to stipulations usually in mortgages, bonds and notes."

In the above case the court also distinguished between a by-law adopted by a building and loan company which added a penalty in case of the failure of a borrowing member to pay promptly his installments, and the by-law of the mutual fire insurance company, but does not give its reasons. The four Pennsylvania cases referred to in the above citation, all deal with stipulated damages in ordinary contracts. My attention has been called to no other case upon this subject which is clearly in point. It will be noted that the court rejected the theory that the added penalty should be treated as interest as was done in the building and loan case in 117 Pa., page 1.

In a recent New York decision in the case of *Seely v. Tiogo County Patrons Fire Relief Association*, 151 N. Y. Supp. 126, the court upheld the validity of the statute (section 266 N. Y. Ins. Co. code), which permits certain mutual fire insurance companies to collect a penalty of fifty per cent where assessments are not paid within thirty days, and in construing this statute, the court held that the evident purpose of the law was to provide a penalty for the non-payment of dues and assessments, and that it permitted the company to give credit to it

members and to charge them the fifty per cent interest. The main question in this case was whether the company could adopt a by-law which would provide for a forfeiture of the insurance for non-payment of an assessment within thirty days and as to whether such a by-law would not be in conflict with the statute above referred to. The court held that the by-law was in conflict with the statute, but as stated above treated the penalty as in the nature of interest.

The by-law in question does not explain the purpose of the penalty excepting by inference,—that is, nothing is said about stipulated damages nor the expense of collection as a basis of the additional charge. On its face it would appear to be simply an interest charge, the rate being so great as to amount to a penalty. In this particular case, I am informed that the company also reserves the right to cancel the policy for non-payment of assessments which are in default as an additional penalty in the nature of a forfeiture. This would be an additional reason for treating the added percentage as an interest charge.

If we treat the matter as interest, then it is subject to the usury laws of the State unless the statute under which the company is organized excepts it from the operation of the usury laws. An examination of all of the laws relating to mutual companies fails to disclose any such exemption. In this connection, it is of interest to read the building and loan laws of this State in which building and loan companies are given permission to charge a greater rate of interest than the usury laws would permit and exempting expressly such companies from the penalties of the usury law. Building and loan companies are to some extent mutual and co-operative and yet it is only because of the exemption from the usury laws that such companies are permitted to charge unusual rates of interest. See *Bachtel v. Saginaw Building & Loan Association*, 143 Mich. 599; *Myers v. Loan & Building Association*, 117 Mich. 389; *Building and Loan Association v. Burch*, 124 Mich. 57; *Estey v. Building & Loan Association*, 131 Mich. 502.

As stated above, building and loan associations are mutual in their character although not to the same extent as corporations organized under the mutual fire insurance laws of the State. I am unable to distinguish between these two kinds of corporations insofar as the by-law in question is concerned, and the Pennsylvania case above referred to does not attempt to distinguish excepting by merely saying that they are different, assigning no reasons therefor. It is, therefore, my opinion that none of the mutual insurance companies in this State are authorized to enforce the provisions of such a by-law as we have under consideration insofar as the same would conflict with the usury laws of the State.

Your second question is as follows: "A company has a provision in its by-laws that the policy becomes void if an assessment remains unpaid for sixty days." You desire to know whether the company can collect assessments made for losses after the policy has become void because of such non-payment.

Mutual insurance companies usually have either the above provision or else a provision by which policies are suspended during the default of the member. These two different by-laws or provisions involve different results. As a general rule the weight of authority is to the effect that if the policy becomes absolutely void and not merely voidable because of the non-payment of an assessment, the company has no option in the

matter and cannot waive the forfeiture, but may, however, enforce the collection of all assessments due from the member before the policy becomes void. *Yost v. Am. Ins. Co.*, 39 Mich. 531; 19 Cyc. 615, 616, 619; *Tolford v. Church*, 66 Mich. 431.

Where, however, the charter or policy of the company merely provides for a suspension of the policy during the default, the weight of authority is to the effect that a company may waive the forfeiture for its own benefit and hold the member liable for future assessments as well as for the first assessment of which he is in default. *Susquehanna Mutual Fire Ins. Co. v. Leavy*, 136 Pa. St. 499; *McAvoy v. Neb. Etc. Ins. Co.*, 46 Neb. 782; *Joliffe v. Madison Mutual Ins. Co.*, 39 Wis. 111; 19 Cyc. 620; *Farmers' Mutual Fire Ins. Co. v. Bowen*, 40 Mich. 147.

The provisions for suspending a policy in the mutual company for non-payment of assessments is generally self-executing so as to cut-off the right of the insured in case of loss and so as to require an affirmative act on the part of the company to establish a waiver of the forfeiture. *Farmers' Mutual Fire Ins. Co. v. Bowen*, supra; *Brewing Co. v. Fire Ins. Co.*, 168 Mich. 606; *Hill v. Mutual Fire Ins. Co.*, 129 Mich. 141.

It has been held that where a company brings suit upon assessments levied after the default of a member, such act is evidence of a waiver, being inconsistent with an actual forfeiture. *Susquehanna Mutual Fire Ins. Co. v. Leavy*, 136 Pa. St. 499, and that the collection of a judgment would effect a reinstatement of the member ipso facto. *Joliffe v. Ins. Co.*, supra.

As to cancellations at the request of the member, assuming his assessments are all paid and his liabilities to the company discharged, much depends upon the charter and by-laws of the company. In this respect, the provisions of the charter or by-laws must be strictly complied with. *Shroeder v. Farmers Mutual Fire Insurance Co.*, 87 Mich. 310.

To sum up this branch of your inquiry, it may be said first, that if the by-laws make an absolute forfeiture of the member's policy in case of the non-payment of an assessment, the company cannot waive the forfeiture; second, if the by-law merely provides that a member shall stand suspended during default, then the company may waive the forfeiture, and may enforce the liability of the member, or it may keep the policy in suspense and may sue to recover the assessments due to the company at the time of default; third, that the member's policy cannot be cancelled and a member still liable for future assessments for losses and expenses of the company accruing after the cancellation.

Your third question relates to the practice of a certain company in bringing suit against its members for unpaid assessments. It appears that this company has, for instance, on one occasion brought some forty suits against forty different persons, all before the same justice and all disposed of on the same day; that an officer of the company was present in court as a witness for each of these forty cases; that his residence was in Lansing, while the suits were brought in one of the northern counties; that a few of the suits were contested, but the great majority were not contested; that judgments in some of the suits were rendered in favor of the company and in a few of the suits settlements were made before judgment; that the plaintiff in all cases taxed the full limit of ten dollars costs; that the item of costs included the officer's fees for service; justice's fees and the balance of the ten dollars in each case was

made up of witness fees, per diem and mileage. You also state that in some other cases recently brought by this company an attorney's fee of five dollars has been charged.

You desire to know whether the same witness can charge per diem and mileage for each case under such circumstances, and also when it is lawful to charge an attorney's fee in justice's court.

In reply to this question would say that witness fees in justice's court are now governed by Chapter 77 of the Judicature Act of 1915. Section 4 of this Chapter provides:

"Witnesses attending any justice's court shall be entitled to receive from the party requiring their attendance, the following fees: for each day's attendance, \$1.00; for each half day 50c; and ten cents for each mile necessarily traveled in going to the place of attendance by the usually traveled route."

As applied to your inquiry, I think this should be construed to permit the witness to charge his mileage in *one* case, and as to all other cases in the same court on the same day, or heard while the witness is still in the vicinity, no further mileage should be allowed. Inasmuch as it is only when the witness necessarily travels to the court house that he is entitled to any mileage, the court should take judicial notice of the fact that the witness has only traveled once and should not, therefore, allow him mileage in each case. It is a general rule that when a witness is in a court house as a witness or spectator, he may be called to the stand by order of the court upon the request of any party and it is not necessary to subpoena him for that purpose. The same is substantially true of his per diem. For instance, in the circumstances which you set forth, a witness remains in court for each case and the entire forty cases are disposed of in the same day. He is, therefore, the plaintiff's witness the entire day and receive his per diem as such, and I do not think it would make any difference in how many cases the plaintiff called him as a witness, he would not be entitled to more than one day's pay. It would be assumed that the witness was remaining voluntarily under the circumstances. It would, therefore, be proper for the court to allow him his per diem in one of the cases, but it would not be proper to allow him a full day's witness fee on the same day in the same court for any other cases.

The limit of costs which can be taxed in favor of the prevailing party exclusive of jury fees and fees of the officer for summoning and attending the jury and exclusive of the attorney fee, in justice's court, is \$10.00. Chap. 77 Judicature Act, section 3.

As to taking an attorney's fee, this matter is governed by section 4 of Chapter 71 of the Judicature Act which provides as follows:

"In all cases where a contested trial takes place in addition to all other costs allowed by law, if the prevailing party was represented by a regularly licensed attorney and counselor, such party shall be entitled to tax the sum of \$5.00 as an attorney fee: Provided, That in no case shall the plaintiff tax a greater attorney fee than the amount of judgment recovered exclusive of costs."

This section is very plain and needs no construction. You will note

that an attorney's fee can only be taxed in a contested case. Where, therefore, the defendant allows judgment to be taken against him by confession or default, no such fee may be taxed.

Trusting this opinion covers the matter submitted in your inquiry, I am,

Very respectfully,
GRANT FELLOWS,
Attorney General.

P-v-O

CONTAGIOUS DISEASES—INDIGENT PATIENTS—TUBERCULOSIS. Declared to be an infectious and communicable disease; The County where the patient is cared for must stand the expense if the individual or those upon whom he is dependent, are unable to do so.

April 28, 1916.

Bishop & Blackney, Flint, Michigan:

Gentlemen—I am in receipt of your communication of the 22nd inst. asking for an opinion upon the following: You state that you have in Genesee County, as a county charge, a tubercular patient, who although a resident of your County, contracted the disease in Detroit, Wayne County, and was sent from that county to your county for treatment. You desire to know, First, Whether tuberculosis in a contagious disease within the meaning of a Michigan statute which provides that all contagious diseases shall be cared for by the county in which the disease was contracted; or, in other words, can Wayne County send a patient who contracted the disease, tuberculosis, in Wayne County, and is a county charge wherever he is, to Genesee County to be cared for at the county's expense, simply because he is a resident of your County, or is Wayne County liable for the care of said patient.

In reply to your first inquiry, I call your attention to Section 1 of Act 27 of the Public Acts of 1909, which reads in part, as follows: "Tuberculosis is hereby declared to be an infectious and communicable disease."

In reply to your second query I call your attention to Section 15 of Act 98 of the Public Acts of 1909. This Act is directly amendatory of Act No. 7 of the Public Acts of 1903, and that Act amended Section 4424 of the Compiled Laws of 1897. From an examination of Section 4424 of the Compiled Laws of 1897, you will notice, it is provided that such "Nurses and other assistance and necessities, which shall be at the charge of the person himself, his parents or other persons who may be liable for his support, if able; otherwise, as a charge of the county to which he belongs."

Under the provision above quoted the Supreme Court of this State held, in the case of Board of Supervisors of Arenac County vs. Board of Supervisors of Iosco County, 158 Mich. 344, that the County from which such person came was liable to the County furnishing such relief, for the expense of same.

Act No. 7 of the Public Acts of 1903 as well as Act No. 89 of the Public Acts of 1909, omitted the words "otherwise as a charge of the County

to which he belongs." By doing this the Legislature clearly expressed the intent to strike out that provision of law which rendered the County from which such person came, liable.

Act No. 98 of the Public Acts of 1909 further provides if such person, his parents or other person who may be liable for his support, be not able to pay for such assistance and necessities that an itemized account of the same shall be rendered to the Board of Supervisors by filing the same with the Clerk, etc., and that the Board shall audit and allow the same, thereby placing the duty of meeting such obligation upon the County wherein such person was cared for.

In addition to what has been said, I am impressed that your County would properly be charged with the support of the patient, inasmuch as you admit in your statement that the patient is a resident of your County. Even under the original law as stated in Section 4424 Compiled Laws of 1897 the charge is made against the "County to which he belongs." The Legislature has since stricken out these words, making the county where the patient may be, liable for his support. Therefore, a determination of this question must be made under the law, as amended, and not under the original section above referred to, which amendments made quite a radical change. I do not find where our Supreme Court has passed upon this question, since the decision referred to, but it will be noticed that the decision in that case was made under the original law even though the case was not presented until after the amendments took effect. It will also be observed from an examination of that case, that while the Court does not determine the matters upon the question of residence of the patient, yet an intimation is made which no doubt controlled to some degree at least.

For the reasons stated I am constrained to hold that tuberculosis is such a dangerous communicable disease as would fall under the provisions of law referred to, and that Genesee County is liable for the support of the patient you mention.

Trusting these suggestions may be of assistance to you, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Mo-pi-O

CIGARETTES. Act 31 of the Public Acts of 1915 only applies to Cigarettes containing tobacco.

May 2, 1916.

Mr. A. A. Ellsworth, Grayling, Mich.:

Dear Sir—Your communication of the 30th ult. received with reference to the enforcement of Act 31 of the Public Acts of 1915 known as the Anti-Cigarette Law. You desire to know whether the so-called cubeb cigarette comes within the meaning of this act.

In reply thereto would say that the act in question contains no definition of the word "cigarette." It is the general rule of statutory construction that words and phrases found in statutes, in the absence of specific definition, must be given their usual and ordinary meaning. Probably the safest source from which to obtain the common meaning of a

word is the dictionary. Your attention is therefore called to the definition given in Webster's dictionary to the word "cigarette,"—"a little cigar; a little fine tobacco rolled in paper for smoking."

Had the Legislature intended that any other meaning should be given the word cigarette I have no doubt a different definition would have been included in the act. I am therefore of the opinion that only those cigarettes which contain tobacco come within the prohibition of the above act.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-k-O

TAXATION, EXEMPTION, WILD LANDS. Act 208, P. A. 1913, discussed. Second purchaser entitled to statutory exemption for balance of five year period providing he complies with statute.

May 2, 1916.

Mr. W. V. Snyder, Beaverton, Mich.:

Dear Sir—Your communication of April 24th is received wherein you ask to be informed if a man, living on cut-over land and having his exemption two years, could sell his land and the purchaser still obtain his exemption.

In reply, I respectfully call your attention to Section 1 of Act 208 of the Public Acts of 1913 which provides as follows:—

"Hereafter any cut-over or wild lands, as defined herein, which shall be actually purchased by any person for the purpose of making a home, shall be exempt from the payment of all taxes for a period of five years thereafter. Cut-over and wild lands shall be construed to mean any swamp land or land from which timber has been removed and no part of which description claimed to be exempted has ever been cultivated. The exemption herein provided for shall not be operative in any case, unless the purchaser, either upon contract or otherwise, actually resides upon and improves at least two acres thereof each year and every year of the said five years in a manner to subject the same to cultivation: Provided, that the exemption herein provided for shall not extend to more than eighty acres purchased by any one person."

It immediately occurs to me that under the liberal wording of this statute, a variety of construction might be placed thereon, but I am inclined to construe the Act as nearly as may carry out the apparent Legislative intent. It seems clear to me that the Legislature had in view the settling and clearing of cut-over or wild lands, and as an inducement to persons who should avail themselves of the privilege, an exemption in taxation was allowed for five years to the person so purchasing. Whether this exemption extends to a second purchaser who has taken over the land originally purchased from the State before the expiration of the five year period is the question you present.

The State is primarily interested in having its wild, uncultivated lands

converted into a productive condition and for this reason the Legislature holds out the inducement before mentioned. It seems immaterial whether the first purchaser or a subsequent purchaser fulfills the requirements of the statute; it is the ultimate result which is sought. The term 'purchaser', as used, however, is broad in its meaning. It will be noticed that no limitation is used. Consequently a purchaser may mean a purchaser of a purchaser, but there is a limitation or rather condition expressed, and that is, that the purchaser must reside upon and improve at least two acres of land each and every year of the said five years in a manner to subject the same to cultivation. He shall likewise purchase for the purpose of making it his home. After the purchaser has improved, let us say, more than the required acreage, and at the end of the second year, sells his interest to a second purchaser, may the second purchaser then take the land together with the benefit of the tax exemption. In other words, did the Legislature contemplate the purchase of improved or unimproved lands in order to give to the purchaser the exemption provided for; and to what extent may a tract of land be improved and still come under the exemption provision.

In arriving at a conclusion of this question, I am impressed that each case must be dealt with individually, and that the terms of the Act will not cover all cases alike. It, therefore, resolves itself into the judgment of the assessing officer, all the facts being considered whether or not the tract in question is or is not improved. A tract of land, part of which is improved and part of which is not, may be so considered an improved tract, and would not therefore be subject to the exemption. On the other hand a portion greater, perhaps than the statutory requirements, may be improved, and yet it would not be considered an improved tract. Each case must, therefore, rest on its own facts. In determining the question you submit, it occurs to me that it must depend upon the premise stated, and that it is a matter of judgment of the assessing officer. If the second purchaser takes the land from the first in an improved condition, then I am of the opinion that the exemption does not attach. If, however, he takes the land in a condition which could be called unimproved, then he might claim the statutory exemption; but not, however, for a period greater than the five years, provided he improves at least two acres of land a year during the balance of the five year period.

Trusting these suggestions may serve to furnish you with the desired information, I am,

Yours respectfully,
GRANT FELLOWS,
Attorney General.

Mo-k-O

HIGHWAY LAW. Where a railroad right of way lies between a highway and adjacent property, the owner of the latter is qualified to sign a petition under section 4 of the Covert Act.

May 2, 1916.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Mich.:

Dear Sir—I note from your letter of the 1st instant that the question has been raised as to whether or not the owners of land fronting on

the railroad right of way lying between their property and the highway, such right of way being adjacent to the road and parallel with it, may lawfully sign petitions under Act 59 of 1915 for the improvement of such road. In the instances in which such question has arisen, the highway is the sole exit of such property owners. You have asked that I give you my views as to the construction of the statute governing this matter.

The qualifications of the signers of a petition under the Covert Act are suggested by section 4 thereof which in terms permits the owners "of a majority of the frontage of lands fronting upon any highway, or portion of a highway, not less than two miles in length" to make the required application, either to the county road commissioners or the State Highway Commissioner. The precise question at issue is, therefore, whether or not land can be said to "front" upon a given highway notwithstanding that the right of way of a railroad company intervenes, it being necessary that the property owner cross such right of way to obtain access to the highway. I am impressed that one who owns land so situated is within the scope of this section and is in consequence legally entitled to sign an application for the improvement of the highway. In the common acceptation of the term, I believe it may be safely said that the land does front on the highway notwithstanding the intervening railroad right of way. Such property owner would unquestionably be liable to an assessment on the theory that his property is benefited by the improvement; and in making such assessment the presence of the right of way would doubtless be disregarded. It is obvious that the contrary interpretation might operate to prevent proceedings being taken under the Covert Act to improve a particular highway that is paralleled by a railroad lying adjacent to it. It would scarcely seem that a technical construction of the language in section 4 is consistent with the general spirit and purpose of the act. Rather that interpretation should be observed that will permit the carrying out of the objects sought to be attained. It is my opinion accordingly that the owner of property situated in the manner suggested in your inquiry should be regarded as qualified to sign a petition.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. In assessment district under the Covert Act township lines are to be disregarded.

May 2, 1916.

Mr. Joseph F. Bowler, Prosecuting Attorney, Clare, Michigan:

Dear Sir—I am in receipt of your letter of the 29th ult., requesting the opinion of this Department upon certain questions arising under Act 59 of 1915, the so-called Covert Act. Your inquiries are as follows:

"First—Where the road proposed to be built traverses two townships whether a majority of the abutting property owners along the entire route proposed is sufficient, or if it is necessary

to have a majority of such owners in each of the townships proposed to be traversed?

Second—Whether or not the benefits received by each parcel of land is taken and assessments upon such figured from the total cost of the entire road completed.”

In reply to your first inquiry, I would say that the act in terms has reference, insofar as the application for improvement is concerned, to the entire highway sought to be improved. It follows accordingly that the fact that such road lies in more than one township does not require that the owners of a majority of the frontage in each of said townships shall necessarily sign the application. In other words, the crossing of the line between such townships has no bearing on the proceeding. If a majority of the owners of the frontage for the entire route signing a petition, the statute is complied with.

In reply to your second question, it is my opinion that the provisions of the act relating to the assessment for benefits received required that the cost of the entire improvement shall be taken into account, rather than the cost of that portion of such improvement lying in the township where the particular parcel of land to be assessed is situated. In this respect also the township line must necessarily be disregarded. Improvements under the Covert Act are not township matters in any sense of the word; and in the formation of assessment districts portions of different townships may be included. All property within such district must be assessed its proportionate benefit of the entire undertaking, a fact that in itself would require the ignoring of township lines.

Trusting these suggestions will indicate my views upon the matter submitted, I am,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

MOTOR VEHICLE LAW. An incorporated village may pass an ordinance regulating the speed of motor vehicles.

May 2, 1916.

Hon. Frederick Wieland, Orion, Michigan:

My Dear Mr. Wieland—I am in receipt of your letter of the 1st instant in which you ask my opinion as to the right of an incorporated village to pass an ordinance regulating the speed at which motor vehicles may be operated on the public streets therein. You call attention to section 23 of Act 302 of 1915 which in terms seems to imply that municipalities are limited with respect to the adoption and enforcement of regulations of this character. That section is substantially a re-enactment of the third subdivision of section 7 of the motor vehicle law of 1909; and that act was doubtless intended to be construed with reference to the provisions of section 9 which specifically forbade the passage of local ordinances except as otherwise expressly provided. This section was afterwards declared unconstitutional by the Supreme Court

in *People v. McGraw*, 184 Mich. 233, insofar as it attempted to take away from municipalities their reasonable control of streets and highways. Accordingly the section was omitted from the Act of 1915; but as suggested the third subdivision of section 3 was re-enacted as section 23 of the present law. I am impressed that we must construe it with reference to its history, bearing in mind that in the law of 1909, it was really in the nature of an exception to the inhibition placed upon local authorities rather than a restriction of power. So viewed it can scarcely be regarded in my opinion as designed in the Act of 1915 to restrict municipalities in the enactment of reasonable and proper ordinances relating to the use of public streets and highways. It follows, therefore, that such an ordinance as you suggest may be adopted and enforced by a municipality in accordance with the provisions of its charter. I think that any other construction would be inconsistent with section 28 of Article VIII of the State Constitution which declares that

"The right of cities, villages and townships to the reasonable control of their streets, alleys and public places is hereby reserved to such cities, villages and townships."

Undoubtedly an ordinance of the character suggested by your inquiry must be regarded as an exercise "of reasonable control." Such being the case, it would seem to be squarely within the contemplation of the constitutional provision quoted.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

DRAIN LAW. Specifications of a joint county drain may not be changed after the orders of determination have been made and the proceeding reached the stage of the division of the cost between the counties.

May 5, 1916.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing:

Dear Sir—I have before me your letter of the 4th instant and note that you have been requested, pursuant to the statute, to apportion the cost of construction of a certain joint drain between the counties of Genesee and Shiawassee. You state that the specifications of this drain call for a greater width of bottom along a part of the route than is actually necessary to take care of the volume of water that will flow through the drain after it is constructed. The question arises as to whether or not the commissioners concerned may make any alterations in the plans so as to lessen the width. It appears that proceedings have been had in the probate court and that the required orders of determination have been made. Such being the case, I am constrained to the opinion that the specifications as contained in the orders may not be changed at this stage of the proceeding. It would appear that the commissioners were appointed to determine the necessity of the drain and that they decided such question in the affirmative. Such conclusion was, of course, reached with the specifications before them. In other words, the drain that was

found to be necessary and conducive to the public health was as described in specifications incorporated in the order of determination. It is obvious that to now permit a change in the plans would lead to the construction of a drain the details of which were not passed on by the commissioners (or by the jury as the case may be) and which consequently has not been found to be a necessity. Furthermore, it is imperative in proceedings of this kind that changes shall not be made in plans and specifications 'properly adopted' at an advanced stage of the proceeding and especially after the basic question involved has been decided. As tending by implication to support this conclusion, I call your attention to the decisions of the Supreme Court of this State in *Nugent v. Erb* 90 Mich. 278; *Milton v. Drain Commissioner*, 40 Mich. 229; *Kroop v. Forman*, 31 Mich. 144.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. Contracts may be let by a township for the improvement of highways on the condition that machinery belonging to the township may be used by the contractor.

May 5, 1916.

Mr. Amos J. Scrimger, Harrison, Michigan:

Dear Sir—Your letter of the 1st instant with reference to the situation that has arisen concerning the improvement of highways in your township is at hand. I find that under date of April 20th, I gave an opinion upon certain phases of the matter to the Highway Commissioner in your township and am sending you herewith copy of such opinion. I infer from your letter that bids are to be advertised for and that if such are acceptable, the work will be done by contractors. This raises the question as to whether or not machinery that the township has purchased might be used by such contractors in doing the work. It is quite possible that an arrangement of this kind might be made, bids being requested on the condition that the machinery of the township should be used. It scarcely seems to me that there could be any serious legal objection to this proceeding. Probably lower bids could be received under such conditions. As a practical proposition, it might not be inadvisable to advertise for the doing of the work, (a) the bidders to furnish the machinery, (b) the township to furnish the necessary equipment or a specified portion thereof.

I infer that there is no question as to the legality of the contract for the purchase of the machinery by the township. Such being the case, the obligation to pay therefor may not be avoided on the ground that the improvement of the highway is to be carried on by contractors rather than under the day-labor system.

When money is raised either by taxation or by the sale of bonds for the highway improvement fund, such money is to be expended under the direction of the township board and the highway commissioner. I call your attention specifically upon this proposition to section 10 of Chapter II of the general highway law. The fact that the amount raised is

not sufficient for the doing of a certain work desired by the electors cannot deprive the commissioner and board of their jurisdiction in the premises.

Trusting that these suggestions will cover your inquiries,

Very respectfully,

GRANT FELLOWS,

Attorney General.

Ca-v-O

LAKE BOTTOM. The State has no title to lake bottom of inland lakes unless one of the riparian owners. Title to same is in riparian owners.

May 5, 1916.

Hon. Fred B. Wells, Cassopolis, Mich.:

Dear Sir—Your communication of sometime ago to the Public Domain Commission with reference to the ownership of the lake bottom of inland lakes has been referred to this Department for consideration and reply.

In reply thereto would say that the Supreme Court of this State has repeatedly held that the lake bottom of inland lakes does not belong to either the general government or to the State but belongs to the riparian owners. Of course, if the State happens to own some portion of the shore of an inland lake it would have the same sort of title to a portion of the lake bottom as any other riparian owner. For your further information, I call your attention to the case of *Clute v. Fisher*, 65 Mich. page 50, also to *Rice v. Ruddiman*, 10 Mich. 125.

Very respectfully,

GRANT FELLOWS,

Attorney General.

P-v-O

TAXATION. Bonds of foreign governments not exempt under Act 142, P. A. 1913, as amended.

May 5, 1916.

Mr. Charles E. Temple, Michigan Trust Bldg., Grand Rapids, Michigan:

Dear Sir—With reference to your inquiry of the 27th ult. in which you requested my construction on Section 2 of Act 142 of the Public Acts of 1913, as amended by Act 254 of the Public Acts of 1915, as to whether bonds of foreign countries are tax exempt.

This question has recently arisen in the City of Saginaw and the City Attorney has been orally advised by this Department that there is nothing in the above Acts upon which to rest an opinion that the bonds of foreign countries are tax exempt in this State under the above Acts. Upon examination of this question I am quite satisfied that such bonds are not exempt.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

P-pi-O

ACCOUNTANCY BOARD. Authority of the Governor to revoke certificate of C. P. A.

May 5, 1916.

Hon. Archibald Broomfield, Big Rapids, Michigan :

Dear Sir—Your communication of the 7th ult. received as follows :

"A complaint has been filed with the Board of Accountancy, charging in substance that the holder of a C. P. A. certificate under Act 240 of 1913 was guilty of dishonesty, unprofessional and unethical methods in a matter connected with his duties as a public accountant during the month of October, 1913. The acts relied upon arose over two years before the certificate was granted, and were not brought to the attention of the Board until the month of April, 1916. Section 4 of the above act provides as follows :

'The Governor shall issue certificates to the persons who are recommended to him by the Board of Accountancy as having qualified under the provisions of this Act. The Governor may revoke any certificate for sufficient cause after written notice to the holder thereof and a hearing thereon, and shall issue such notice whenever requested to by the Board.'

As bearing upon the question of whether we should ask the Governor to issue such notice and entertain a hearing on these charges, I would like your opinion upon the question of whether the Governor would have the power to revoke a certificate on the ground of alleged unprofessional conduct arising before the certificate was granted."

In reply thereto would say that the language of Section 4 which you have quoted is very indefinite insofar as the statement of what constitutes grounds for revocation is concerned. The term "sufficient cause" is not supplemented by any definition or further elaboration, such as frequently is found in provisions of this kind. Section 1 of the Act, however, provides that "Any person * * * of good moral character who shall have received from the Governor * * * a certificate of his qualifications to practice as a public accountant * * * shall be styled and known as a certified public accountant. * * *". Section 3 provides : "Satisfactory evidence of good moral character shall be required from each applicant for his certificate." This section also provides for further academic qualifications. This section also has the following provision : "The Board shall recommend to the Governor of the State for C. P. A. only those applicants who shall meet the full requirements as called for by the rules of the Board and who have complied with the requirements of this Act."

From these provisions it will be seen that as a condition precedent to the issuance of a certificate the Board is authorized to inquire into the morals of each applicant and as a necessary corollary should the Board find that any applicant is not possessed of a good moral character, though otherwise qualified academically, it would doubtless be justified in refusing to recommend a certificate. It is also apparent that the

Governor acts upon the recommendation of the Board and is not required to inquire into the character of the applicants who are recommended.

A "good moral character" could scarcely be said to be possessed by an applicant who had been guilty of dishonesty, unprofessional and unethical methods in the practice of his profession. The statute apparently contemplates that the Board of Accountancy shall satisfy itself that the applicant possesses this good moral character, by the production of satisfactory evidence of an affirmative nature rather than resting upon a presumption of such character. It is further required that the applicant shall furnish the evidence rather than that the Board itself should seek the evidence from outside sources. This places a burden upon the applicant which he is required to meet in good faith and without misrepresentation or fraud.

If, as a matter of fact, the applicant is not possessed of a good moral character, and, to deceive the Board produces evidence which is not true in that respect, then unquestionably a fraud has been practiced upon the Board itself and consequently upon the Governor. Under such circumstances one of the bases upon which the certificate is founded is, therefore, wanting in the applicant, namely, the good moral character required by the law, and the applicant has been guilty of concealment or misrepresentation of the facts. This then I think would bring the case within the rule laid down in *People vs. Police Commissioners*, 102 N. Y. 583, where the appointment of a patrolman on the police force was held illegal and his subsequent removal justified by the appointing Board where it was shown that before his appointment he had denied having been convicted of any crime (an untrue statement), the law requiring such proof and also forbidding an appointment in case the applicant has been convicted of any crime. The decision referred to appears to state a rule which is sustained by the weight of authority. In *re Alexander*, 167 Mich. 495.

You are, therefore, advised that in my opinion the Governor would have authority under Section 7 of the Act to inquire into charges preferred and, if satisfied that the certificate was obtained by a fraudulent representation of the facts concerning the holder's character, could revoke his certificate although the acts complained of were committed before the certificate was issued.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-pi-O

HIGHWAY LAW. The County should pay the surveyor or engineer employed pursuant to Section 27 of Chapter IV.

May 6, 1916.

Mr. Ray E. Bostick, Prosecuting Attorney, Cadillac, Michigan:

Dear Sir—Chapter IV of the General Highway Law, which Chapter governs the operation of the so-called County Road System, makes provision in Sections 26 and 27 thereof whereby an organized township in a county that has adopted such system may build State reward road. Section 27 requires that when such action is contemplated the Town-

ship Board shall file a notice with the Board of County Road Commissioners on or before the first day of May of the year in which the road is to be built. It is then the duty of the Board of County Road Commissioners to "furnish an engineer or surveyor who shall establish a grade for such road or roads." No provision in express terms is made for the payment of compensation to such surveyor or engineer and in consequence some question has arisen as to whether his services are a charge against the County or against the Township. You have requested my views upon the matter.

The language of the statute would seem to imply that the County Road Commissioners shall furnish the engineer, at the request of the Township authorities, without expense to the latter. Had it been the intention of the Legislature that the Township should pay for these services I think we may assume that language appropriate to express such intention would have been used. It would seem to be implied that where a Township seeks to build a State reward road in a county operating under the County Road System, the Commissioners shall co-operate and assist to the extent indicated, that is, the survey will be made by their employe. Were the charge for such services intended as a burden, upon the Township it seems plausible to contend that the selection of the surveyor would have been vested in the Township Board. Construing all these provisions involved together and bearing in mind their obvious purpose, I am impressed that the conclusion above suggested is the more logical one and that the County should pay the surveyor or engineer selected by the Board of County Road Commissioners.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

ELECTION LAW. JUSTICE OF THE PEACE. A justice elected to fill a two-year vacancy cannot occupy the office of justice of the peace for one year vacancy.

May 10, 1916.

Mr. William Bates, Mansfield, Michigan:

Dear Sir—I am in receipt of your letter of May 3d asking to be advised upon the following. You state that through an oversight at the spring election there was elected a justice of the peace to fill a vacancy for two years, which did not exist as you also had a two-year man on the board. You desire to know whether this man can take the one-year term and sit on the board this ensuing year.

In reply I call your attention to a provision of the Constitution of 1909, Article VII., Section 15, which reads in part as follows:

"There shall be elected in each organized township not to exceed four justices of the peace, each of whom shall hold the office for four years and until his successor is elected and qualified *
* * A justice elected to fill a vacancy shall hold office for the residue of the unexpired term."

There has always been under the Constitution four justices provided by law for each township and the term of years of the office and the provision for qualification of the terms at the first election tend to support the theory that it was intended by the Constitution that there should be four justices in each township but the Constitution by its terms does not provide that there must be four justices in the township, but that there shall be not exceeding four. See *Brooks v. Hydorn*, 76 Mich. 273. The Constitution requires the justices to be elected and it is against public policy to have them chosen otherwise except for temporary purposes. See *Edison v. Almy*, 66 Mich. 329. Inasmuch as the justice who was elected to fill the two year term was elected through error and inasmuch as the officers of justices of the peace are separate and distinct offices, I am of the opinion that the vacancy of the one-year man must continue until his successor is elected and that the justice elected to fill the vacancy of the two-year man cannot occupy the office of the one-year man.

Trusting this gives you the desired information, I am,

Very respectfully,

GRANT FELLOWS,

Attorney General.

Mo-v-O

MARRIAGE. CONFLICT OF LAWS. First cousins domiciled in Michigan, going into Ky. for the purpose of evading our marriage laws, subject themselves to Sec. 11704 C. L. 1897.

May 10, 1916.

Mr. E. R. Chapin, Prosecuting Attorney, West Branch, Mich.:

Dear Sir—I am in receipt of your letter of May 5th asking for an opinion upon the following statement of facts:

“At the last term of our circuit court a young man was prosecuted for perjury under section 8609 of the Compiled Laws of 1897. The charge against him was that he swore falsely to a statement in his application for a marriage license, that there was no legal impediment to his marriage to the girl, when in truth the parties were first cousins and thus prohibited from marrying, under Act 257 of Public Acts of 1903. Respondent plead guilty to the charge and received a small punishment.

These same parties, finding that first cousins could marry in the state of Kentucky, went to this state and intermarried and have returned to this county to live. Another young couple, being first cousins, who intermarried in this county ceased to live together as husband and wife when the above mentioned prosecution was instituted, also went to Kentucky, intermarried, and have returned to this county to live.

I call your attention to the incest statute, being section 11704 of Compiled Laws, and would respectfully ask for your opinion as to whether or not the above parties would be guilty of incest, being first cousins, but being legally married in another state. There is considerable feeling in the township where these parties reside

over the matter, and it is my opinion that the marriage, although legal in another state, would not excuse them under the incest statute, but before taking any action I would be pleased to have an opinion from your department."

Replying to your communication I respectfully call your attention to the Statute referred to by you in your letter, viz. section 11704 of the Compiled Laws of 1897, which provides as follows:

"All persons being within the degree of consanguinity within which marriages are prohibited, or declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, shall be punished by imprisonment in the state prison not more than fifteen years, or in the county jail not more than one year."

The question presented is whether or not the parties you mention can shield themselves behind the Kentucky statutes and evade a Michigan law, which prohibits the same acts if committed within the borders of our own state. Or in other words, whether these parties can do indirectly that which our own laws prohibit doing directly?

I am unable to find any case presenting the above situation which has been determined by our Supreme Court; but this is not a new question in other jurisdictions, and I shall presently refer to a few which will serve to guide in the determination of the matter. The apparent object of the statute quoted was to prohibit persons within the degree of consanguinity within which marriages are prohibited from intermarrying, in order that the issue resulting from such a union might not be mentally weakened. The legislature of this State has extended the inhibition to persons who are first cousins, and it is with this object in mind that the legislature has not only declared such marriages void, but has attached a severe penalty for a violation thereof. May first cousins who are domiciled in Michigan go into the state of Kentucky where the statutory inhibition does not attach, there marry, and return to the place of their domicile and avoid a criminal statute of this state?

The general rule no doubt is that the law of the place where the marriage is consummated prevails, and a marriage valid at the *lex loci contractus* is valid everywhere; likewise the converse, a marriage void at the *lex loci contractus* is void everywhere, but there is one well recognized exception which the courts make to this general rule, and that is where the marriage is contrary to good morals, public policy or which conflicts with a statute aimed at good morals and public policy, more especially where the parties intentionally seek to avoid such a statute.

A leading case upon this proposition is the case of *In re Stull's estate*, *Morehouse's Appeal*, 183 Penn. St. 625, where the parties residing in Pennsylvania crossed into the State of Maryland and were married, contrary to a Pennsylvania statute which provided that "the wife or husband who shall have been guilty of the crime of adultery, shall not marry the person with whom the said crime was committed;" the husband married his paramour and they then returned into Pennsylvania where later the husband died. The wife then sought administration of his estate. In refusing administration, the court in its opinion, used the following language:

"There is no question as to the general rule that a marriage which is valid by the law of the place where it is solemnized is valid everywhere. Of course, even this general rule has its exceptions where the particular marriage is contrary to good morals, or public policy, or to the positive statutes of the country where it is sought to be enforced. But where a man and woman, citizens of the same state, and subject to an absolute statutory prohibition against entering into a marriage contract which is against good morals and contrary to public policy, leave their domicile and enter another for the express purpose of violating the law of their domicile in this respect, the case is highly exceptional, and the great weight of authority is against the validity of such a marriage in the place of their domicile. There have been conflicting decisions upon the question, but very few of them sustain the validity of the relation where it has been assumed for an intended evasion of the law of the domicile and is contrary to good morals. The fact of such an intended evasion has been repeatedly recognized as the basis of invalidity when otherwise validity would have been declared. Thus, in a noted case in Tennessee, *Pennegar & Haney v. State*, 87 Tenn. 244, decided in 1889, where the same question precisely as in this case was raised, to-wit: a marriage in Alabama between a man and woman domiciled in Tennessee, who had been guilty of adultery and, after a divorce had been obtained in Tennessee on that ground, the guilty husband and his paramour went to Alabama and were married, and at once returned to Tennessee. They were indicted in Tennessee for lewdness, and were convicted and sentenced, and appealed to the Supreme Court, claiming that the marriage being lawful in Alabama must be held lawful in Tennessee. In the latter state the statute prohibited such marriages in almost the words of our own act of 1815, to-wit 'When a marriage is absolutely annulled the parties shall be severally at liberty to marry again; but a defendant who has been guilty of adultery shall not marry the person with whom the crime was committed, during the life of the former husband or wife.' In an elaborate opinion the Supreme Court sustained the sentence and held the Alabama marriage to be void in Tennessee. In view of the close analogy of the case to the one we are considering, some citations from the opinion will be appropriate. 'The marriage being prohibited by statute is void if solemnized in this state.... Does the rule that a marriage valid where solemnized is valid everywhere, make the second marriage in Alabama in this case valid.... Marriage is an institution recognized and governed to a large degree by international law prevailing in all countries, and constituting an essential element in all earthly society. The well being of society, as it concerns the relation of the sexes, the legitimacy of offspring and the disposition of property alike demand that one state or nation shall recognize the validity of marriages had in other states or nations according to the laws of the latter, unless some positive statute or pronounced public policy of the particular state demands otherwise.' The opinion further holds that the rule that a marriage valid where solemnized is valid everywhere has its exceptions, to wit: '(1) Marriages which are deemed contrary to the law of nature as generally recognized in Christian countries; (2)

marriages which the local law-making power has declared shall not be allowed any validity, either in express terms or by necessary implication...."

See also the following cases which sustain this view:

Succession of Gabisso, 119 La. 704; 44 So. 438, 121 A. S. R. 529; 12 Ann. Cas. 574; 11 L. R. A. (N. S.) 1082;
Cunningham v. Cunningham, 206 N. Y. 341, 99 N. E. 845, 43 L. R. A. (N. S.) 355;
State v. Kennedy, 76 N. C. 251, 22 Am. Rep. 683;
Re Stull, 183 Pa. St. 625, 39 Atl. 16, 63 A. S. R. 776, 39 L. R. A. 539;
Pennegar v. State, 87 Tenn. 244, 10 S. W. 305, A. S. R. 648, 2 L. R. A. 703;
Brook v. Brook, 9 H. L. Cas. 193, 7 Jur. N. S. 422, 4 L. T. N. S. 93, 9 W. R. 461, 5 Eng. Rul Case 783.

It was also held in the case of *U. S. v. Rodgers*, 109 Fed. Rep. 886, that a marriage by a Russian Jew in Russia with his niece though lawful in Russia will not be recognized as valid in Pennsylvania where the continuance of the relation would expose the parties to indictment in the criminal courts. The court states the exception referred to in the following language:

"If the relation thus entered into elsewhere although lawful in the foreign country is stigmatized as incestuous by the law of Pennsylvania no rule of comity requires a court sitting in this state to recognize the foreign marriage as valid."

Also as bearing upon the question of incestuous marriages, I call your attention to the case of *Stevenson v. Gray*, 56 Ky. 193, in which the court said that

"Incestuous marriages form an exception to the rule that a marriage valid where celebrated will be held valid in the other countries in which the parties may be subsequently domiciled."

I may state, however, in passing that there is respectable authority to the contrary and some of the courts hold fast to the rule that a marriage valid where consummated is valid at all times and in all places. But we are disposed to adopt the reasoning expressed in the Pennsylvania case as satisfactory to us. It invokes practically three distinct ideas, to-wit: (1) That the foreign marriage is contrary to the positive statute of the domicil; (2) That it is contrary to the public policy of the government of the domicil, in that it offends against the prevailing sense of good morals among the people there dwelling; and (3) that it was contracted for the express purpose of evading the positive law of this state, and it is therefore to be regarded as a fraud upon the government and people of the domiciliary residence.

For the reasons stated, I am inclined to the view and am of the opinion

that the section referred to applies to the cases submitted by you and that an information would lie against the offending parties.

Trusting that the foregoing may be of assistance to you, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

M-v-O

LIQUOR LAW. Section 39 Warner-Cramton Law as to Preference discussed.

May 10, 1916.

Mr. X. A. Boomhower, Prosecuting Attorney, Bad Axe, Michigan:

Dear Sir—Your communication of the 6th inst. received as follows:

"The following proposition just came up in this county, and I would like your opinion on same. In a village of about 300 inhabitants, the time the Warner-Cramton law was passed, there were four saloons, and there have been four up until May 1st of this year. Before April 15th, 1916, the council passed an ordinance reducing the number of saloons to two. There were three applications for liquor licenses this year, one filed in February, and upon April 10th, the village attorney who was acting for the other hotel men, was at the council meeting with liquor bonds for those two men, but no applications. It seems the village clerk called attention to the fact that there was but one application on file. The village attorney then said he wanted the two applications considered as filed with the village clerk and a record was made showing that three applications were filed, two of them verbally, and that two of the applications were neither in the hands of the village clerk nor any of the council men until the 19th day of April, and are marked as filed upon that date. The council passed the two applications which were filed on the 19th day of April, but which the records show were to be considered filed on the 10th.

As I take it, the application must be in writing, sworn to and filed with the council before the same can be acted upon by them. In this case there being but one written application filed before the 15th day of April, is not the applicant having his petition filed before that date entitled to a license, providing he comes within the law in other respects. I would like your opinion on this matter at your earliest convenience."

In reply thereto would say that from your communication I would understand that the two applicants who made oral applications at the meeting of the council on the 10th of April afterwards filed proper written applications on the 19th day of April, and that the council considered all the applications together on the latter date, but did not approve the application of the man whose application had been filed in February. The only question which you therefore present is whether the council at this meeting on April 19th should have given preference

to the application filed in February, that being the only proper application before the council up to April 15th.

I have no doubt you are perfectly correct in your construction of Section 4 of the General Liquor Laws which require an application for a license "to be in writing and upon oath." The language of Section 4 is perfectly plain and is mandatory in form.

In this connection I call your attention to an opinion of a former Attorney General, Hon. Franz C. Kuhn, on page 60 of the Attorney General's Reports for 1913.

Your main question therefore depends upon the construction of Section 39 of the General Liquor Law, and in particular to the provision which reads as follows:

"If the applications for such license filed on or before April fifteenth of any year equal or exceed the maximum number permissible under this section, no further applications shall be considered; and if such applications exceed such maximum number the township board or village or city council shall grant the maximum number, and shall determine which of the applications so filed shall be granted: Provided further, That when an applicant is found to be ineligible under the terms of this act or when said applicant fails to furnish a proper bond or when a license is revoked or determined from any cause, such township board or village or city council shall grant further applications, if any are on file, up to such maximum number, giving preference to those filed on or before April fifteenth, and after that to applications in the order in which the same are filed."

This provision as to preference has been considered by the Supreme Court in three cases, viz.,

Hanold vs. Common Council, 163 Mich. page 242,

Rohde vs. Circuit Judge, 168 Mich. at page 689.

Bryant vs. Common Council, 169 Mich. 299.

Each of the above cases reached the Supreme Court in a mandamus proceeding brought to enforce the rights of an applicant, and necessarily involved the rights of other applicants. None of these cases involved a criminal proceedings. Your attention is directed to this fact because I am of the opinion that the only proper way to test the validity of a liquor license that has been granted by a common council, in the granting of which the council has used its discretion, would be by a direct proceeding, unless the proceedings of the council were void in some particular and therefore no protection to the holder of the license. Possibly injunction proceedings at the instance of the people would also lie. See

George vs. Travis, 185 Mich., page 597.

I doubt if the courts would look with favor upon testing the question by a criminal proceeding.

People vs. Edwards, 174 Mich., page 445.

I do not think this question should be tested at the expense of the public for the sole purpose of establishing the rights of one applicant as against another, where the fault, if any, apparently lies with the members of the Common Council. It appeals to me as a case where only the applicant whose application was rejected could be the party aggrieved. This of course would present purely a private question in which the state should not interfere.

In view of these circumstances I hesitate to advise further upon the proposition.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

P-k-O

INDETERMINATE SENTENCE. Question whether a certain sentence comes within the ruling in *Re Hamilton*, 22 D. L. N., 943.

May 11, 1916.

Hon. James Russell, Warden, Marquette, Michigan:

Dear Sir—I have before me your communication relative to Frank Norman, sentenced on the 23rd day of October, 1914, on conviction in the circuit court for Baraga county for rape. The sentence imposed by the trial judge reads as follows,—“That said Frank Norman be confined in the State House of Correction, branch of the State Prison in the upper peninsula, Marquette, Michigan, at hard labor for a period of not less than four years and not more than life, from and including this day, and the judge at the time of pronouncing said sentence did recommend and state that in his judgment the proper maximum penalty in the case at bar would be eight years.”

You desire to know whether this sentence comes under the ruling of the Supreme Court in *Re Hamilton*, 22 Detroit Legal News, page 943, in which case it was held that the sentence of the circuit judge should be considered as a maximum and minimum sentence, and not a sentence for life.

In reply thereto I would say that the *Hamilton* case is distinguishable from the *Norman* case in this. The form of the *Hamilton* case was as follows,—“That the said George E. Hamilton be confined to the State House of Correction, a branch of the State Prison of the upper peninsula, Marquette, Michigan, at hard labor, for the period of not less than ten years from and including this day, and the judge thereupon did recommend and state that in his judgment the proper maximum penalty would be the term of his natural life as fixed by the statute.”

With respect to the *Hamilton* sentence the court said, “We cannot hold the recommendation of the court as the sentence and ignore the positive language of the judgment fixing the period of maximum of not less than ten years. I think it is plain that the court intended to give, and attempted to give a judgment which would permit the operation upon the judgment of the indeterminate sentence law, a judgment which would permit paroling or the discharge of a prisoner at any period after ten years.”

No doubt the same thing could be said of the judgment in the Norman case, but the latter judgment is plainly a sentence for life where in the Hamilton case the court did not positively sentence for life but merely recommended. I think the decision in the Hamilton case was influenced by the fact that the form of the sentence was irregular and amounted to merely a recommendation.

In my judgment the Norman case falls more nearly under the decision in *re Evans*, 173 Michigan, page 25, where it was held that the attempt of the trial judge to fix the maximum at less than that fixed by statute was a nullity and should be rejected as surplusage. In the *Evans* case, however, which was a conviction for burglary, the maximum penalty is fixed by statute at fifteen years. The court held that no other maximum could be named, the trial judge having no discretion in the matter. On a conviction for offences, extreme punishment of which is life or any term of years, the trial judge may sentence for life or he may sentence for a less period,—that is, he has some discretion. If he does sentence for life then he has no right to fix a minimum or a different maximum.

In *Re Vatali*, 156 Mich., page 370.

Thus viewed, the sentence in the Norman case should stand as a sentence for life.

In view of the Hamilton case the prisoner will doubtless eventually test the question by habeas corpus at the proper time, but we would not feel justified in advising you that the life sentence imposed by the court is void. The case is no doubt a proper one for the supreme court to pass upon in view of its uncertainties.

Yours respectfully,
GRANT FELLOWS,
Attorney General.

P-k-O

MOTOR VEHICLE LAW. The term municipalities as used in the Act includes counties as well as cities.

May 11, 1916.

Hon. Coleman C. Vaughan, Secretary of State, Lansing, Michigan:

Dear Sir—Your communication of recent date received by this department in which you request an opinion relative to exemptions on county owned motor vehicles under Act 302 of the Public Acts of 1915.

Section one of the above act provides in part that the term "Motor Vehicles" as used in this act, except where otherwise provided, shall include all vehicles propelled by power other than muscular except motorcycles operated by policemen and firemen on official business, also all motor vehicles including trucks owned and operated by municipalities, provided that the same shall be defined by proper signs in which department of said municipality said trucks are employed, traction engines, road rollers, fire wagons, fire engines, police patrols, wagons, ambulances and such vehicles as run only on rails or tracks.

The term "municipalities" as used in the above section should be construed, I believe, in a broad sense to include counties as well as cities. It is therefore my opinion that county owned motor vehicles used in the pursuit of county business should be exempt from the operation of the law when properly designated.

Trusting this answers your question satisfactorily I am,

Yours respectfully,

GRANT FELLOWS,

Attorney General.

M-k-O

SCHOOL LAW. Subdivision (f), Section 1 of Act 47, P. A. 1913 construed.

May 11, 1916.

Mr. Perle L. Fouch, Prosecuting Attorney, Allegan, Michigan:

Dear Sir—This will acknowledge your communication of recent date wherein you ask to be advised if a parent is liable to prosecution under Act 47 of the Public Acts of 1913, his child being between the ages of twelve and fourteen years and attends a confirmation class two days a week, the only subjects which are there taught being the Bible and the Church Catechism.

Section 1 of the Act to which you refer makes it the duty of the parent or guardian to send to the public school during the entire school year any child between the ages of seven and sixteen years under their control. This section also contains a proviso that in the following cases children should not be required to attend the public school; * * *

(f) "Any child twelve to fourteen years of age while in attendance at confirmation classes conducted for a period of not to exceed five months in either of said years."

You will note that this section makes no provision regarding the number of days per week such child must be in attendance at confirmation classes, neither does it provide that any particular subjects must be taught the children attending such classes in order to exempt such children from the provisions of the compulsory school law. It is, therefore, my opinion that it was the intention of the Legislature to exempt from the provisions of this Act for the length of time therein stated children twelve to fourteen years of age who are in actual attendance at confirmation classes irrespective of the subjects taught or the number of days per week such children are obliged to be in attendance at such classes.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

R-pi-O

GAME AND FISH LAW. Act 236 of 1915 applies to a meandered, navigable lake that the public has the lawful right to use notwithstanding that it has no outlet nor inlet.

May 11, 1916.

Mr. Charles U. Champion, Prosecuting Attorney, Coldwater, Michigan:

Dear Sir—I have before me your letter of recent date in which you request my views upon a certain situation that has arisen in your County. As I understand the matter a certain person has been arrested for violating the provisions of Act 236 of the Public Acts of 1915, it being claimed that such person was fishing with nets in Gilead Lake. It appears that said lake has no outlet nor inlet and I am advised that it contains approximately three hundred acres. It is surrounded by farms; but the party who is being prosecuted is not the owner of any of these farms nor does he reside thereon. It further appears that Gilead Lake is meandered and I assume from the facts before me that it is navigable within the meaning of the term as defined by the Supreme Court of this State. It is contended that said Lake is wholly private, that the public has no interest whatever therein, and that in consequence its waters are not within the scope of the Act under which the complaint is drawn. The point at issue is whether or not this contention is well founded.

The purpose of Act 236 of 1915 is, as indicated by its title, to protect fish in the inland waters of the State. It must undoubtedly be construed as applicable to those waters in which the general public is interested, that is, the measure being one intended for the public benefit it can have no application in the given case unless its extension to the particular body of water concerned is necessary and expedient to subserve the public rights and interests. This brings up squarely before us the vital question at issue here: Has the public such a right or interest with respect to fishing in Gilead Lake that the Act under which the complaint is drawn should be extended to its waters? It was held by the Supreme Court, in *People vs. Conrad*, 125 Mich. 1, that the public had no interest in a small pond containing approximately fifteen acres and that in consequence an Act of the State relating to the spearing of fish did not apply. In all probability such pond was not navigable within the definition of that term as laid down by the Supreme Court. Had its waters been navigable and had the public possessed the consequent right to use the same for purposes of navigation it would seem that a different conclusion, in harmony with other decisions of the Court, might have been reached.

I wish to call your attention particularly to the case of *Borroughs vs. Whitwam*, 59 Mich. 279. There the owner of land over which flowed a certain stream known as "Thread River" brought an action of trespass against one who had gone on such stream to fish. At the trial in the Circuit Court the Circuit Judge instructed the jury that if the stream was a navigable one the public would have the right to use the same for travel or pleasure and on business and that if the alleged trespasser was lawfully on its waters he might take fish therefrom without being liable. The correctness of this charge as a matter of law was recognized by all the Justices of the Supreme Court although it was the opinion of the majority that under the facts disclosed by the evidence the stream

was not actually navigable. It was shown that it was very shallow especially during the summer, and that there were many turns and rapids in its course.

This case would, therefore, seem to be authority for the proposition that if inland waters of the State are in fact navigable then the public, if lawfully thereon, has the right to take fish from such waters. Applying this proposition to the facts of the instant case we have the answer to the question suggested at the outset. If the public has the right of navigation on the waters of Lake Gilead, and the consequent right to take fish therefrom, then clearly it can not be said, (as it was said in *People vs. Conrad*) that the public has no interest in the preservation and protection of the fish in this lake. Rather the public must be regarded as having such an interest and as being entitled to the protection thereof under the laws of the State. Thus regarded obvious reasons of public policy require that Act 236 of 1915 should be construed as applying to the waters of this lake.

I infer from the facts that have been placed before me that the right of the public to go upon Lake Gilead either for purposes of navigation or for fishing has never been questioned by the riparian owners. In other words, such owners have impliedly assented to the proposition that the lake, because of its extent and because of the uses to which it may be put, is not private in its nature but on the contrary is open to the use of the public. It occurs to me that much weight must necessarily attach to this fact. In any case where we find the public generally availing itself of the right or privilege of using the waters of any lake for business or for pleasure, it may well be inferred that the Legislature must protect such rights and privileges. Stated concretely if the general public has had in years past, and now has the undisputed right or privilege of taking fish from the waters of Gilead Lake, then the Legislature may protect such right or privileges and any law referring in general terms to other waters in which the public has such right should be regarded as applying to this lake.

The case of *Marsh vs. Colby*, 39 Mich. 626, bears directly on this point. There the plaintiff brought an action against the defendant for an alleged trespass on a lake that was claimed to be wholly private. It appears that it was a very small body of water and was almost entirely enclosed within the lines of plaintiff's farm. In holding that the defendant was not guilty of a trespass the court said, in part: "It has always been customary, however, to permit the public to take fish in the small lakes and ponds of the State and in the absence of any notification to the contrary, we think any one may understand that he is licensed to do so. No such notification appears in this case, and we therefore hold that the defendant was not a trespasser in passing upon the plaintiff's land with the intent to take fish, having no knowledge that objection existed to his doing so." In the case that has arisen in your County not only was no notification given to the public to keep off from the waters of this lake, but on the contrary the public has been permitted to go upon the lake. As before suggested, this must be taken as indicating an implied recognition on the part of the riparian owners of the fact that the lake is a navigable one and as such subject to the public use for navigation and also for fishing.

The decision of the Supreme Court in *Lincoln vs. Davis*, 53 Mich.

375, must also be regarded as supporting the proposition that if the public has the right to go on any body of water it has also the right to take fish therefrom in accordance with the statutes of the State. It follows, of course, that if the public has such right, then it may be protected in the enjoyment thereof and a general law of the State enacted for the purpose of protecting the public right of having fish protected and preserved should apply to such body of water. Obviously such right is to be protected wherever it exists and Acts of the Legislature must be construed accordingly.

Trusting that these suggestions will indicate to you my views upon the situation suggested by your letter, I remain,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

MICHIGAN RAILROAD COMMISSION. Railroad companies may not properly require shippers to execute a sidetrack agreement containing provisions not authorized by sub-section b of section 6 of Act 300, P. A. 1909 and the R. R. Commission may in a proper case, upon hearing, order the construction of such tracks.

May 11, 1916.

Michigan Railroad Commission, Lansing, Michigan:
Attention Mr. Glasgow.

In the city of Detroit recently, you referred to Mr. Crowley a certain proposed sidetrack agreement and lease between the Grand Trunk Railway Company of Canada and The W. A. C. Miller Company together with a request that you be advised as to the right of the company to require the conditions therein contained as preliminary to the construction of the sidetrack.

In reply you are advised that in the matter of sidetrack agreements, your Commission has been vested with authority by the provisions of section 6b of Act 300 of the Public Acts of 1909. This particular sub-section has never been construed by the Supreme Court of this State but has been referred to in the case of *G. R. & I. R. R. Company v. Michigan Railroad Commission*, 183 Mich. 398. In that case the court did not pass upon or determine the validity of the act for the reason that the order of the Commission was based upon the complaint filed previous to the taking effect of the act. We must assume the validity of the act. Hence it follows that it is the duty of every railroad company to "provide a reasonably adequate and suitable spur track to and upon the grounds of any mill, elevator, storehouse, warehouse, dock, wharf, pier, manufacturing establishment, lumber yard, coal dock, or other industry or enterprise wherever such spur track does not necessarily exceed two miles in length and is practically indispensable to the successful operation of any such industry or enterprise, and shall connect such spur track with its main track and operate same in connection therewith: Provided, that such railroad may require the person or persons, firm, corporation or association primarily to be served thereby, to pay the legitimate cost and expense of acquiring by condemnation or purchase where necessary the rights of way for such spur track, and of constructing the same, in

which case the total estimated cost thereof shall be deposited with the railroad before the railroad shall be required to incur any expense whatever therefor. No railroad shall, however, be required to provide a spur track where it is unusually unsafe and dangerous: Provided, That in the event of the failure of said shipper and the said railroad to agree, the necessity for, reasonableness of and practical safety of such spur track and connection, and the operation thereof shall be decided by the Michigan Railroad Commission upon complaint and hearing as provided in section 22 of the act." It will be noted from an examination of the proposed contract submitted to The W. A. C. Miller Company that the same contains certain provisions not authorized by the section above quoted. In our opinion the statute makes it the absolute duty of railroad companies to construct, connect and operate such tracks for the benefit of those who come within the terms of the act and comply with the conditions therein set forth and your Commission is authorized, upon hearing, when the conditions of the statute are found to exist, to compel such action upon the part of the railroad company.

Trusting that this sufficiently answers the inquiry propounded, I am,
Very respectfully,
GRANT FELLOWS,
Attorney General.

Cr-v-O

Papers submitted returned herewith.

HIGHWAY LAW. The Board of Supervisors may not take over a city street as a county road and enter on the improvement thereof without the approval of the Board of Supervisors in accordance with the statute at the regular October meeting.

May 12, 1916.

Mr. R. L. Lewis, Prosecuting Attorney, Charlevoix, Mich.:

Dear Sir—You have recently submitted to me a letter addressed to you by the city attorney of Boyne City and have asked that I give you my views with reference to the matters therein referred to. It appears that a branch of the so-called trunk line highway extends between Boyne City and Petoskey. It is desired to improve one of the streets of the former municipality as a part of such road and in accordance with the plans and specifications adopted therefor. I find that under date of January 10th last I gave an opinion to the State Highway Commissioner with reference to a somewhat similar situation. I am accordingly sending you a copy thereof, or rather a copy of such portions of that opinion as seem to be in point. I believe that the same will sufficiently indicate my views upon the general questions suggested.

The city attorney raises also a specific question as to "whether or not the board can take over the road and advertise for bids without waiting to submit the question to the board of supervisors next October?"

In view of the provisions of section 20 of Chapter 4 of the General Highway Laws, I am constrained to the opinion that this question must be answered in the negative.

The section of the statute referred to requires that the board of county road commissioners shall prepare estimates as to the amount of taxes

to be raised in the county for improving and repairing county roads, specifying and itemizing the particular roads and parts of roads where the moneys to be raised shall be expended. This determination is required to be submitted to the board of supervisors at the October session thereof, and the latter board may reject specific items if it is deemed expedient so to do. It is expressly declared that "It shall not be lawful for such county road commissioners without the consent of such board of supervisors to expend any such moneys upon any other roads than as thus specified. If the board of county road commissioners were to take over a particular road and proceed with the improvement thereof without first securing the approval of the board of supervisors in the manner contemplated by the statute, it is obvious that the inhibition expressed in the clause above quoted would be violated. The making of contracts, even though no money were actually expended, would likewise be open to objection. Such contracts, if valid, would result in the placing of pecuniary obligations on the county, a thing that should not be done under such circumstances as are here represented prior to action of the board of supervisors. Under those provisions of the law requiring the commissioners to submit an itemized statement, specifying the roads and portions of roads to be improved, the board of supervisors is entitled to pass on every item, with the privilege of rejecting part or all of the determination of the board of road commissioners. In the instant case no estimates covering the particular highway in question have, I assume ever been presented to the board of supervisors. To permit this improvement to be undertaken without its submissions and consequent approval would amount to a denial of the authority of the latter board and would in consequence contravene the express requirements of the statute.

In terms the language found in section 20 does not seem to contemplate that estimates made by the road commissioners shall be submitted to the board of supervisors at any meeting thereof other than the regular October session. In as much as the entire proceeding is strictly statutory I am impressed that the requirements as prescribed by the legislature must be strictly adhered to. Doubtless the law-making body had good and sufficient reasons for limiting the consideration of the question by the supervisors in the manner indicated. Possibly it was thought expedient that the question of raising money for county road purposes should be settled at the same meeting or session at which the question of raising taxes for general purposes is determined. However this may be, the clause of the statute making it a duty of the county clerk to place the plans and estimates before the supervisors cannot be regarded as directing or authorizing such action at any meeting except as specified, that is, at the regular October session. Of course the improvement of this road or street by the board of county road commissioners involves the expenditure of county funds. Even though some sort of agreement is entered into by which the county shall expend no more than the amount of the state reward to be received on the road, the situation is not altered. In other words, the county pays out this money in the first instance. It may be reimbursed partially or wholly by the reward money paid to it by the state for the improvement of highways; but the possibility or probability of such reimbursement has no

bearing on the proceedings to be taken nor on the necessity of adhering to the statutory requirements.

I am returning herewith the letter submitted with your inquiry.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-k-O

HIGHWAY LAW. A determination of a board of county road commissioners even though vague and indefinite should not be disregarded when the board of supervisors has accepted the same and has voted the tax as recommended.

May 16, 1916.

Mr. John Jones, Prosecuting Attorney, Ontonagon, Michigan:

Dear Sir—I note from your letter of the 13th instant that at the annual meeting of the board of supervisors last fall, the board of county road commissioners formally presented their written determination, as required by section 20 of Chapter IV of the general highway law, setting forth the amount deemed to be necessary to be raised by taxation for county road purposes. The statute requires that the roads and parts of roads upon which moneys so raised are to be expended shall be specified and itemized, the amount for each road being set forth separately. It appears, however, that your road commissioners did not go into details in their determination as presented, but merely stated that the moneys to be raised should be expended “in constructing and maintaining the roads now determined as county roads, the same being nearly seventy miles of roads.” After some delay and more or less discussion, the board of supervisors voted the amount specified in the determination of the commissioners. It is suggested that an understanding was reached between the boards with reference to the expenditure of the money, it being the consensus of opinion of the supervisors that the greater part of the fund to be raised by the tax should be used for the improvement of certain trunk line highway. No record, however, was made of this agreement. The minutes of the proceedings taken by the supervisors show nothing except the presentation of the determination and the vote to raise the tax. The board of road commissioners now propose to spend the greater portion of the money upon a road other than that contemplated by the verbal understanding or agreement above referred to. It appears that the chairman of the board of supervisors desires to have the wishes of the members of his board carried out if possible and that he desires to know what action, if any, may be taken to restrain the county road commissioners from carrying out their plans. This necessarily involves the question as to whether or not the determination presented to the board of supervisors and ostensibly acted on thereby is valid under the provisions of section 20 of Chapter IV of the general highway law. You have asked that I give you my views upon the matter.

Undoubtedly the determination in the form presented was open to objections. It occurs to me that the board of supervisors might have insisted that there be a more exact compliance with the requirements of the law and that the commissioners specify particular roads or por-

tions of roads to be improved, with the amount to be expended in each instance. This, however, was not done. So far as the records show, the board of supervisors must be deemed to have been satisfied with the information contained in the written determination. No force nor effect can be given to the verbal understanding that is claimed to have been reached. Members of the board of supervisors were entitled to rely only on that which was properly before them, and as a matter of law, it cannot be presumed that they in fact relied on something wholly outside the record. Neither do I think that the determination as presented and acted upon was so defective as to render the proceedings entirely void. The primary purpose of the statute in requiring that the board of county road commissioners shall go into detail would seem to be to insure that the plans as to the expenditure of the money to be raised should be placed before the board of supervisors so that the members of that board may act with a definite understanding as to what is to be done. In other words, the requirement of the statute as to the formal determination is designed for the protection of the board of supervisors and to enable it to perform its duty in a proper manner. While, as before suggested, the formal determination in this case might doubtless have been rejected as being not sufficiently specific, we are confronted by the fact that such action was not taken. Rather the determination was accepted and the amount recommended was voted. This proceeding can be construed in no other way than as indicating that the board of supervisors was satisfied with the determination and that its members believed that the tax should be voted for the purpose specified, that is, for the construction and maintenance of those roads that had previously been taken over as county roads. It does not occur to me, under the facts as indicated by your letter, that the board of supervisors is in any position to raise the question at this time as to the legality of the proceeding. To permit it to do so would, it is obvious, permit it to question the validity of its own actions. The tax having been assessed and the greater part thereof collected, I do not feel that it should be characterized as an illegal imposition. It may be said also that the determination while indefinitely expressed yet contained sufficient to enable it to be regarded as a substantial compliance with the statute in the absence of any objection to its form. Definite reference is made therein to the roads to be constructed and maintained and the inference would seem to be that the money raised was intended to be applied equally on all of such roads. I think it may well be said at this stage of the matter that the determination cannot be viewed as a nullity and that the money voted by the board of supervisors is to be expended by the board of county road commissioners in accordance with such determination. In any event, the verbal understanding that has been referred to can be given no weight, so that as a practical proposition, there would seem to be no alternative other than as above suggested.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

SCHOOL LAW. The power of the board of education to issue general certificates on the completion of special courses in the normal schools may not be an arbitrary exercise, but its action is *prima facie* correct.

May 16, 1916.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing,
Michigan:

Dear Sir—You have recently called my attention to the fact that the State Normal College is offering, among others, a course in "Household Arts." Said course comprises three years of work and it is declared in the College Year-Book that the students completing the same will receive a degree and also a certificate "entitling them to teach in the grades or in their special subjects." It appears that some difference of opinion has arisen as to whether or not a general certificate, that is, a certificate entitling the holder to teach any or all subjects in the public school system of the State may properly be granted upon such basis. You have requested my views with reference to the construction of certain statutory provisions bearing upon this matter.

The issuance of certificates upon the completion of courses of study in the normal schools of the State is governed by Act 202 of the Public Acts of 1903. Section 1 of that measure insofar as it is material here provides as follows:

"The State Board of Education is hereby authorized and required to prescribe the courses of study for students, to grant such diplomas and degrees and issue such licenses and certificates to graduates of the several normal schools of the State as the State Board of Education shall determine."

A casual reading of the clause quoted would seem to warrant the inference that the board of education may exercise the power conferred upon it without restraint or limitation of any character whatsoever. It would seem, however, that this act must be construed with reference to its obvious purpose, and particularly with reference to other legislative enactments pertaining to the matter and to the public school system of the State generally. So construed, I am impressed that it was not the intention of the legislature to grant arbitrary or unlimited power with reference to the issuance of teachers' certificates. Notwithstanding the broad language of the statute, I am scarcely prepared to say that the State Board of Education may grant a certificate, the privileges of which have no reference whatever to the preparation for teaching given by the course of study upon which such certificate is based. To illustrate: it would scarcely seem that it was the intention of the legislature to permit the granting of a certificate authorizing the holder thereof to teach any or all subjects offered in the public school system of this State upon the completion of a special course covering only a few months and embracing work in a single subject only, such as music, drawing or domestic science. Act 166 of the Public Acts of 1901, as amended, has in my opinion a certain bearing in this connection. That measure authorizes the granting of certificates to certain teachers who have completed courses in certain

institutions, which courses are designed for the training of kindergarten, music, drawing and domestic science teachers. It is specifically provided, however, that a person holding a certificate so granted shall be considered a qualified teacher in "the subject mentioned in the certificate," and it is further specified that the board of education may pay such teacher for instruction in that subject. Section 2 of this act, as amended by Act 194 of 1915, makes specific reference to courses in domestic science in the State University and in any of the state normal schools. The inference would seem to be that the legislature considered and intended to enact that a certificate granted on the completion of such a special course should authorize the holder thereof to teach the special subject in which training and instruction is given, and only such subject. It seems to me, therefore, that construing these acts together, we cannot avoid the conclusion that it was not the intention of the legislature to authorize the State Board of Education to grant certificates at pleasure to those who may have completed a course of study in one of the normal schools of the State, unless such course of study can be said to bear some substantial relation to the privileges granted by such certificate, that is, to the subjects and grades of work that may be taught by the holder.

I do not desire, however, to be understood as intimating that the general certificate, as above described, may not properly be granted in any case upon the completion of a so-called "special" or "specializing" course in which the work pursued by the student is grouped about a certain subject or branch. The normal schools of the State offer many such courses and without question the State Board of Education is wholly within the scope of its legal authority in granting certificates, to those who complete such courses, in accordance with the present practice. Doubtless it is considered that the work that is taken in the completion of such a course, in the aggregate, does in fact furnish a suitable and proper basis for teaching not only the main subject pursued, but also other subjects offered in the public school system of the State and which the holder of the certificate may contract to teach. It occurs to me that the determination of the State Board of Education upon this matter must be regarded as *prima facie* reasonable and correct. It is obvious that this is a question of fact rather than one of law and that in consequence such presumption is a necessary one. In the specific instance to which you call attention, I do not desire to express any opinion as to the fact. Doubtless, it is the view of the Board of Education that the work is given during the three years of the so-called "Household Arts" course furnishes such a degree of preparation that a student who has completed it is entitled to possess a certificate conferring the privileges indicated by the announcement in the Year Book. As before suggested, this question is one of fact which is, in my opinion, to be determined in view of the legal principles above suggested, bearing in mind the rule with reference to the powers of the State Board of Education, and also the presumption that must obtain when its determination as to such a fact has been reached.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. The improvement fund may be expended on certain village streets but repairs must be undertaken by the village itself.

May 16, 1916.

Mr. J. I. Peck, Village Clerk, Hubbardston, Michigan:

Dear Sir—I am in receipt of your letter of the 13th instant in which you request an opinion with reference to the maintenance of highways in the village. I note your statement that the highway commissioner of the township is inclined to the view that he is not charged with any duty in this respect. Section 1 of Chapter II of the general highway law requires in substance that highways in an incorporated village which were laid out as township roads before the incorporation of such village shall be treated the same as other township roads insofar as the expenditure of the highway improvement fund of the township is concerned. It follows, therefore, that work done upon any such street in an incorporated village, for the purpose of permanently improving the highway, should be undertaken by the township. I call your attention to the fact that the tax for the highway improvement fund is levied and collected on property in the village as well as on property in the township outside the corporation limits. It seems to be the intent of the law, however, that repair work shall be performed by the village authorities and at village expense in such manner as may be prescribed by the charter and local ordinances. You will note from section 1 of Chapter II of the highway law that the tax for the repair fund is levied only on property outside of the limits of incorporated villages. Subsequent provisions of the act clearly contemplate that none of such fund shall be expended within a village. The provisions for the division of the township into road districts and the requirement that the repair tax “shall be expended or worked in a road district where” assessed would seem to be conclusive upon the proposition.

In accordance with the suggestions, it follows that if the work that is necessary to be done on streets in your village is in the nature of the permanent improvement thereof, the same should be undertaken and carried on by the township, necessary expenditures therefor to be made from the highway improvement fund. On the other hand, repairs to such streets must be borne by the village. It is understood, of course, that the highway improvement fund of the township may not be expended on any village street unless the same was laid out as a township road before the incorporation of the village.

Trusting that these suggestions will be of assistance to the township and village authorities in determining the matter referred to, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

BOARD OF SUPERVISORS. May grant permission to construct a dam in a navigable stream without submitting the matter to a vote of the electors.

May 17, 1916.

Mr. Ray Bostick, Prosecuting Attorney, Cadillac, Mich.:

Dear Sir—I have before me your letter of the 15th instant in which you refer to a communication heretofore addressed to this Department by the Hon. Jesse R. Cropsey of Mesick. Mr. Cropsey submitted a proposition arising out of certain action taken by the board of supervisors of Wexford County in 1913 whereby the Western Michigan Power Company was granted permission to construct a dam in Manistee River; and you have requested that I give you an opinion thereon. As I understand the situation, the principal point at issue goes to the authority of the board to grant the permission referred to without submitting the proposition to the electors of the county. The transcript of the proceedings taken that has been furnished to me is not complete but I assume that a proper petition was placed before the board and that the resolution granting permission to the Company to construct the dam was duly and properly carried. It is indicated that the board of supervisors imposed certain conditions as a prerequisite to the construction contemplated, which I infer were accepted and acted upon. There is nothing in the record to indicate either fraud or any vitiating irregularity. The proposition in consequence resolves itself primarily into a determination of the question as to the power of the board of supervisors to take the action that was taken.

Section 14 of Article VIII of the present State Constitution reads as follows:

“No navigable stream of this State shall be either bridged or dammed without permission granted by the board of supervisors of the county under the provisions of law, which permission shall be subject to such reasonable compensation and other conditions as may seem best suited to safeguard the rights and interest of the county and the municipalities thereof. No such law shall preclude the State from improving the navigation of any such stream nor prejudice the right of individuals to the free navigation thereof.”

In substance this section is practically the same as was section 4 of Article XVIII of the Constitution of 1850. The clause with reference to the payment of compensation and the attaching of conditions did not appear in the old Constitution, however, so that a greater measure of discretionary authority is conferred on the board of supervisors at the present time than was granted by the prior Constitution. It will be noted that the section as quoted above does not seem to contemplate that the matter of granting such permission should be submitted to a vote of the electors. Neither does the statutes Chapter XVI of the general highway law, make the approval of the voters a prerequisite to the granting of the necessary permission to construct a bridge or dam. It

would appear that the statute and the Constitution are in strict accord in this respect. The conclusion necessarily follows that the board of supervisors may take action in such a case and may grant permission for the construction in its discretion. We must, of course, construe together the various provisions of the Constitution relating to municipal government and in view of the specific language of section 14 of Article VIII I do not think that any other provision with reference to the granting of franchises by municipalities can be regarded as applicable. Apparently, it was not the intention of the framers of the present Constitution to change materially the fundamental law as to the power of the board of supervisors along the line indicated. Such being the case, the decisions of the Supreme Court, construing the provisions of the statute adopted under the Constitution of 1850, are in point. I call attention particularly to the case of *Maxwell v. Bridge Co.*, 41 Mich. 454 and to *Shepard v. Gates*, 50 Mich. 495. See also *People v. Grand Rapids Power Co.*, 164 Mich. 121, decided since the new Constitution, but involving the action of the board of supervisors taken before such date. The court has indicated in its opinion the nature of the power vested in the board of supervisors and likewise its limitations. I do not understand that it is claimed in the instant case that any improper or invalid conditions were imposed by the board of supervisors nor that the permission was accepted on any void condition. If I understand the situation correctly, I am inclined to the opinion that the case last cited must be regarded as controlling. As to the main point raised by Mr. Cropsey, that is, the necessity of submitting the matter to the vote of the electors of the county, there would seem to be no question. As before stated, the Constitution does not seem to contemplate such submission and my attention is challenged to no provision of the statute that can be construed as requiring it.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

VILLAGE LAW. Under section 2758 C. L. 1897, the common council may exercise its discretion with reference to the number of publications of a village ordinance subject to the condition that there must be at least one such publication if there is a newspaper published in the village.

May 17, 1916.

Mr. Glen Smith, Prosecuting Attorney, Grayling, Michigan:

Dear Sir—Section 2758 of the Compiled Laws of 1897, the same being section 4 of Chapter VI of the general village law of 1895, requires that village ordinances shall be published in a newspaper printed in the village, if there be such, within one week after their passage. The question arises as to whether one publication of any ordinance in such a paper constitutes a compliance with the statute. You request my views upon the matter.

The language of the statute would seem to imply that it was the intention of the legislature to leave the number of publications to the discre-

tion of the legislative body of the village. See *Thornton v. Sturgis Village*, 38 Mich. 639. It does not occur to me that action by such body in directing a single publication would be in any way in contravention of the requirement. The legislature has gone no further in other words than to insure a publication in a newspaper published in the village in case there is a newspaper of that description. Doubtless it was intended that the common council should express itself as to the number of insertions.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

TOWNSHIP LAW. Board of review may not meet at any place other than the office of the supervisor.

May 17, 1916.

Mr. Herman Dehnke, Prosecuting Attorney, Harrisville, Mich.:

Dear Sir—Sections 3852 and 3853 of the Compiled Laws of 1897 provide for meetings of the township board of review specifying the time of such meetings and also that they shall be held at the office of the supervisor. It has been held by the Supreme Court that the provision with reference to the time of such meetings must be regarded as mandatory (*Township of Caledonia v. Rose*, 94 Mich. 216). It appears that in one of the townships of your county, it is desired, for the accommodation of the taxpayers to hold a meeting at a place other than the office of the supervisor. The question arises as to whether or not this may be done legally. In other words, is the provision with reference to the place of the meeting of the same mandatory in character as is the provision with reference to time?

The proceeding being strictly statutory, I am impressed that the requirements suggested by the legislature must be observed in all respects. The time of meeting was declared to be necessary to be observed on the ground that taxpayers have the right to assume that the board of review will in all cases do as directed by the statute. The same considerations would seem to be controlling as to the place. Undoubtedly the legislature particularly specified the office of the supervisor in order that there might be no uncertainty on the part of those interested as to where the meeting was being held. To carry out this purpose, it is obvious that the requirement can be viewed in no other way than as a mandatory one. If the board might meet at other places in its discretion, the purpose of the legislature clearly would be defeated. I am constrained to the opinion, therefore, that the board of review in the township to which you refer may not hold a meeting at any place other than the office of the supervisor.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. Petition for improvement of road under Covert Act in county that has adopted county road system should be addressed to board of county road commissioners.

JUSTICE OF THE PEACE. Where more than one vacancy exists and but one person is chosen at an election, the term for which he was a candidate not being designated in any way, the procedure suggested by section 2324 C. L. 1897 may be followed.

May 17, 1916.

Mr. Shirley Stewart, Prosecuting Attorney, Port Huron, Michigan:

Dear Sir—Your letter of the 16th instant requesting an opinion from this Department upon the matters therein referred to is at hand. Your first inquiry has reference to a proceeding for the improvement of a certain highway in accordance with the provisions of Act 59 of 1915, the so-called Covert Act. I note that St. Clair County has adopted, and is now operating under, the provisions of Chapter IV of the general highway law which governs the operation of the county road system. Such being the case, if the proposed improvement lies wholly in St. Clair Co., the petition therefor should be addressed to the board of county road commissioners. If it is an inter-county affair, then under section 37 of the Covert Act, the petition should be addressed to the State Highway Commissioner. I infer from your statement, however, that the highway to be improved and the lands to be assessed for benefits on account of such improvement are in St. Clair County. Such being the case, the county road commissioners have jurisdiction.

Your second inquiry supposes an instance in which two vacancies exist in a particular township in the offices of justices of the peace. An election is held to fill such vacancies but for some reason only one person was chosen. I infer that the terms that were to be filled were not specified on the ballot. In other words, the person so chosen was not elected to fill a certain vacancy, but rather was chosen generally. Such being the case, it would seem that the procedure suggested by section 2324 of the Compiled Laws of 1897 should be observed. It is therein provided:

“In case more than one existing vacancy in the office of the justice of the peace shall be supplied by election at any township meeting, the classes of the persons elected to fill the same shall be determined by lot, within the time, and in the manner prescribed for classifying justices elected in new townships.”

It would seem that this section should be construed to apply in any case where more than one vacancy exists even though but one person is chosen to fill any of such vacancies. If such person has not been otherwise “classified,” there would seem to be no course to pursue other than as suggested.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. The limitation as to taxation for road purposes in section 26 of Article VIII of the Constitution applies to taxes levied to raise money to pay the interest and principal of bonds issued for highway purposes.

May 17, 1916.

Mr. Hiram Smith, Prosecuting Attorney, Roscommon, Mich.:

Dear Sir—I note from your letter of the 16th instant that the electors of Roscommon County at a special election this spring voted to bond the county in the sum of \$75,000 for the construction and maintenance of the county roads. It is proposed that the amount to be so borrowed shall be paid in equal installments of \$15,000 each at three-year intervals. It further appears that the assessed valuation of the county is \$2,100,000 and that the issuance of these obligations when added to the aggregate of existing county indebtedness will not cause the limit of 5% on such indebtedness, as prescribed in section 12 of Article VIII of the State Constitution, to be exceeded. Section 26 of the same article, however, declares that the tax raised for road purposes shall not exceed in any one year \$3.00 upon each one thousand dollars of assessed valuation for the preceding year. In the instant case the raising of the necessary money to pay the interest and provide for a sinking fund for the retirement of the county road bonds at maturity will necessitate that a tax of more than three mills on a dollar shall be levied each year until the major part of the obligations shall have been retired. The constitutional inhibition is repeated in substance in section 20 of Chapter IV of the general highway law, a lower limit being prescribed in counties having high valuations. Insofar as Roscommon County is concerned, however, the provision of the statute is practically identical with that of the Constitution. The question at issue is, therefore, whether or not money raised by taxation to pay the interest on county road bonds, and to provide the necessary sinking fund for the retirement thereof, can be said to be raised for "road purposes" as such expression is used in the clause of the Constitution above quoted.

The obvious purpose of the inhibition in the Constitution as to the amount that might be raised in any one year for the construction and maintenance of county roads is, of course, to limit the burden that may be placed upon the taxpayers. It is significant to note that such inhibition applies to any attempted exercise of authority on the part of a county, either by the officials thereof or by the electors themselves. In other words, the limit may not be exceeded even though the people, or a majority of them, desire that such may be done. Bearing in mind the purpose of the restricting clause, and its scope, I am constrained to the opinion that it must be deemed to apply not only to money raised by taxation for the direct maintenance and construction of county roads, but also money so raised to meet obligations that have been issued in order to raise money for that purpose. The real object of such tax is the same in one instance as it is in the other. When money is borrowed for the construction or improvement of highway, I think we must conclude that taxes levied to repay such money with the interest thereon are in fact levied for "road purposes." A contrary view would, in my opinion, permit that to be done indirectly which may not be done directly.

The policy of the courts of this State is clearly against any construction that would permit this result. If the electors in your county, to use a concrete illustration, may vote to issue bonds in the sum mentioned to be retired in equal installments at the expiration of three-year periods without reference to the amount of annual taxes, the levy of which would be necessary upon such action, there would seem to be no reason why such an indebtedness might not be contracted, to be paid in one year. Such action would clearly impose a heavy burden for such year; and yet if we are to take the view that there is no limit on the rate of taxation to be levied to retire such obligations, such a condition might obtain. As suggested, the purpose of the framers of the Constitution was to prevent any undue burden, and had it been the intention that taxes levied to retire obligations or pay indebtedness previously contracted for road purposes, should not be within the inhibition, it seems reasonable to believe that such intention would have been expressed in appropriate language.

This brings us to the question as to the validity of the bonds proposed to be issued, in view of the fact that if such obligations are met as they come due and if the interest thereon is paid, the provision of the Constitution here involved must necessarily be violated. The Supreme Court of the State in *Hammond v. Place*, 116 Mich. 628, laid down the proposition that if municipal bonds are valid when issued payment thereof may be enforced notwithstanding that it may be necessary to exceed a prescribed tax limit in order to raise the necessary money. The court, however, recognized the general rule as laid down by the Supreme Court of the United States that the right to contract must be limited by the right to tax, and if, in consequence, in a particular instance a tax cannot be lawfully levied to pay the indebtedness, the contract, or obligations, must be held to be void on the theory that there was no authority to issue the same (*Loan Association v. Topeka*, 20 Wall. 655). Attention was also called to the earlier decision of *Waterworks Co. v. Ironwood*, 99 Mich. 454, in which it was held that a municipality might not contract a bonded indebtedness in excess of the limitation prescribed in the charter, for the purpose of acquiring certain property. The proposed bond issue was to be secured on the property and an attempt was made to avoid the force of the limitation by claiming that such obligations were not really a debt against the city but would merely constitute a lien upon certain municipal property if the transaction were consummated. The court, however, looked to the substance of the proposition and refused to permit the city to avoid the restriction placed upon it with reference to the incurring of indebtedness. I am impressed that the basic doctrine of that decision must control here and that the purpose of the framers of the Constitution may not be defeated by permitting a county to impose a greater burden of taxation for the maintenance of county roads than is specified in section 26 of Article VIII. We come back to the fundamental proposition that money raised to pay indebtedness contracted for a specific purpose should be regarded as, practically, raised for such purpose within the meaning of such a provision as is here involved. In accordance with these suggestions, I am constrained to the opinion that the proposed bond issue in your county must be regarded as unauthorized by law under the authority of the cases cited in *Hammond v. Place*, and which were expressly approved by the Supreme Court in

that decision. Such obligations would be unenforcible even if they could be disposed of.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

GAME AND FISH LAWS. Discussion of the rights of deputy game and fish wardens to enter upon private premises in patrolling streams.

May 17, 1916.

Mr. Ray Trucks, Prosecuting Attorney, Baldwin, Michigan:

Dear Sir—The State Game, Fish & Forest Fire Commissioner has taken up with this department a situation that exists in your county. From his representation it appears that one Charles Gray of the Township of Newkirk has been complained against by John Rowett, a deputy game and fish warden of this State for the offense of obstructing and interfering with the said Rowett in the lawful discharge of his duties. From the facts stated it appears that Rowett was patrolling the banks of the Little Manistee River for the purpose of enforcing the fish laws of the State of Michigan, that the said river runs through or adjacent to the premises of Gray, and that Gray met the deputy at the edge of his premises and refused permission for him to come upon the land and made threats against his person in case he should enter upon said land. We are further advised that the attorney who is appearing for the defendant in justice's court has raised two propositions. First, that the patrolling of the stream is no part of the duties of the deputy game and fish wardens, and secondly, that they have no right to enter upon private property, and that you as prosecuting attorney have inquired of the Game Department respecting the two questions raised.

In reply you are advised that in the opinion of this department deputy game and fish wardens have the unquestioned right to patrol the banks of rivers for the purpose of apprehending offenders and preventing violations of the fish laws. You will note from an examination of the various sections of the act relating to the protection and preservation of fish that such deputy wardens are authorized to arrest without a warrant. For instance, section 5756 of the Compiled laws of 1897, the same being section 4 of Act 28 of the Public Acts of 1887, as amended, confer authority to arrest without a warrant in certain cases. The purpose of the game and fish laws and the conferring of authority with reference to the enforcement of the same upon the Game Department and the officers thereof is not only for the purpose of arresting offenders but for the purpose of preventing violations, and if an officer were estopped from entering upon the land of an individual when the same was necessary to get to the bank of a stream, it would be absolutely impossible to in any way enforce the statutes of the state. In other words, a deputy game warden has the same right of entry upon private premises for the purpose of detecting or preventing violations of the fish laws that any peace officer would have in entering upon private lands for the purpose of preventing misdemeanor or for the apprehension of one having committed such misdemeanor. These propositions are, in our judgment, fundamental and re-

quire the citation of no authority. We therefore advise that you proceed with the prosecution of this case without reference to the propositions of defense by attorneys for this defendant.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Cr-g-O

CONSTITUTIONAL LAW. Proposed housing law examined and held objectionable.

May 20, 1916.

Mr. Edward C. Mershon, Saginaw, Michigan:

Dear Sir—I am in receipt of your favor of recent date and note that as a member of the State Housing Commission, you are interested in the preparation of a legislative measure to regulate housing conditions throughout the State. A bill along this line was introduced at the last session of the legislature, the same being house bill No. 277, File No. 94. It appears that you have taken this bill as a basis and that you desire to so amend certain sections as to broaden the scope of the measure. You have asked for an expression of my views as to the constitutionality of the contemplated changes, calling attention specifically to sections 19, 21, 21a and 22. The proposal as an entirety is designed to promote the health and general welfare of the people by imposing regulations as to the construction, maintenance and alteration of dwelling houses, especially with reference to the lighting, ventilation, sanitation and protection from fire thereof. Section 19 as re-written by you refers to the street frontage of dwelling houses requiring that at least two-thirds of one side of such a building shall have an unrestricted street frontage of not less than sixteen feet. Such requirement is subject to the provision that a dwelling house may be built facing a court which opens on a street and which is required to be of certain prescribed dimensions. The following four sections refer to the lighting and ventilation of rooms prescribing the number of windows, the dimensions thereof with reference to the size of the room, classifying windows and embodying provisions designed to insure an adequate and proper system of ventilation. These specifications as contained in your suggested amendments do not differ in principle from those set forth in the bill as introduced at the last legislative session. So far as the legal principles involved are concerned, I am not prepared to say that any constitutional objection might be urged against the sections referred to as re-written by you, that might not be raised against such sections as they appear in the printed bill before me. I believe that we may consider the matter in a general way without taking up a large number of specific provisions and discussing them with particularity. In fact, in a measure of this length and scope it would, I apprehend, be practically impossible to give separate consideration at this time to each and every clause that may be assailed as invalid in case the proposed measure were to be enacted into law.

Any legislative enactment along this line must necessarily be regarded as an exercise, or attempted exercise, of the general police power. By virtue of its inherent sovereignty, the State through its legislative department may impose upon persons and property within its jurisdiction

restrictions and limitations that are necessary for the protection of the public health and safety and essentially conducive to the public welfare. Such power is, however, subject to the condition that it may not be exercised arbitrarily nor with a disregard for the property rights of individuals. Where a matter of general public health or safety is concerned, the rule may be stated broadly that "private rights must yield to the public good." It must appear in order that a measure of this kind may be sustained as a proper exercise of the police power that it has a direct reference to the promotion or protection of the public health or the public safety. Thus nuisances may be abated and laws may be passed preventing the erection of structures that will constitute nuisances; but, of course, the underlying theory is that a nuisance in the general and proper acceptance of the term is a public menace, because it is dangerous to the public health or safety. A statute designed to accomplish such a purpose must not only be consistent therewith in its requirements, but it must also be reasonable. These are the prime tests: First, Is the purpose sought to be attained within the scope of the police power? Second, Is the measure, in all of its essential and ingredient parts a reasonable exercise of that power? In offering such suggestions as I wish to make with reference to this bill and your proposed amendments, these inquiries will be constantly borne in mind.

If I understand your position correctly, you are inclined to the opinion that this measure should be made applicable throughout the entire State, to all dwelling houses whether within the limits of cities or not. The bill as introduced in the legislature was limited in its scope expressly to "cities of the first, the second, and the third class." Without pausing to consider just what municipalities of the State the framers of the bill had in mind in thus expressing its application, it is patent that consideration of a different character must enter in if the scope is to be broadened as you suggest. In other words, a measure that might be sustained insofar as the larger municipalities of the State are concerned might be regarded as wholly unreasonable, and therefore invalid as applied to rural communities. This would seem to be especially true of legislation along this line which seeks to remedy insanitary and presumably unhealthy conditions. It is significant to note that the act of the State of New York, of the essential parts of which this bill is a copy, applied only to cities of the second class, which class embraces only large municipalities. Wisconsin has a housing law that is applicable in cities of the first class as the same exist under the laws of that State. It does not, however, impose requirements as to the construction of ordinary dwelling houses, being limited to so-called tenement houses. An Act of 1911 along the same line that was made to apply to cities of the second and third class was assailed in the courts and was repealed in 1913 before the suit was disposed of. One clause of said act relating solely to the disposal of garbage was passed on in *Koeffler v. State*, 147 N. W. 639, and was sustained; but, as suggested, the court did not consider the balance of the measure because the same had been repealed. It was apparently the view of the court that the various provisions could be separated and that the invalidity of some would not necessarily invalidate the balance. It may also be noted in passing that the Wisconsin Act, now applicable to cities of the first class only and limited to

places of more or less of a public nature, that is, tenement houses, does not go as far as does the proposed measures now before me.

The New York Act above referred to was assailed also as invalid in the case of *People v. Roberts*, 153 N. Y. Sup. 143. Before that case was decided the legislature repealed the act. (Chap. 32, Laws of 1915). The court in consequence did no more than to pass upon the single section before it, by virtue of which the municipal ordinance directly concerned had been enacted. Such section was held invalid; but I note that its provisions have not been copied in this bill so that the case is of no direct bearing except insofar as it serves to indicate the limitations of the police power and the reasonableness of regulatory requirements enacted in pursuance thereof. The court, however, quoted from Dillon on *Municipal Corporations*, section 695, wherein is laid down the views of the author upon the general principle involved. It is there said in part:

"It has been held that it is not within the power of the legislature by direct legislation, or by delegation of legislative authority, to enact ordinances to so limit and control the use of private property as to deprive the owner of the beneficial use thereof for causes other than the health, safety, convenience or public welfare of the people. Thus the legislature cannot for the purpose of promoting the beauty of parkways or boulevards, authorize a city to establish by ordinance a building line within the limits of private property to which all buildings must conform without complying with the constitutional requirements as to make compensation for property taken."

Of course, the same principle is involved when restrictions and requirements are imposed with reference to the use of private property as are met with when such property is actually taken or its use in a particular way is forbidden. The quotation from Judge Dillon and the decision of the New York Court, which seems to be passed in the main on the general rule as thus laid down, are therefore to be regarded as authority for the proposition suggested at the outset to the effect that such a measure cannot be sustained unless it is necessary for the proper protection of the health and safety of the public. In this instance, I am not prepared to say that the provisions of this bill, drastic as they are, can be regarded either as necessary for the purpose stated, or as reasonable in application. I am rather inclined to the opinion that the essential provisions would be regarded by the courts if the bill were enacted into law, as arbitrary and unwarranted interference with rights of private property. Generally speaking the owner of such property is entitled to use it in any way that he sees fit, subject to the condition that he may not constitute of it a nuisance to the public health and safety, nor may he interfere with the public rights. In other words, he may not constitute a public nuisance of such property and he must use and enjoy it subject to public and governmental rights. Otherwise, the owner is the sole judge as to the manner of use and the purpose of the use. It has been the policy in every State, and particularly so in Michigan, to safeguard and protect private rights. The guarantees of the Federal Constitution insure such protection against arbitrary and unwarranted interference on the part of the states under the guise of

the police power. I do not think that it can be said that a country dwelling house even though constructed without regard to the specifications as to lighting, sanitation, etc., that are set forth in this act must be deemed to constitute a nuisance to the public health or to the public safety in any way whatever. In the smaller municipalities of the State, I believe that the same conclusion is justified. Quite possibly a housing measure of this general character that is applicable to the larger cities might be sustained on the ground that the conditions obtaining in such municipalities necessitate the limitations and restrictions so imposed. Such a law and each provision thereof must, of course, be subject to the test of reasonableness. It is my personal view that the provisions of this proposed measure, and especially of the contemplated amendments thereto, are too drastic in many respects to be sustained by the courts even though the measure were limited to cities. In making this statement, I have in mind particularly the provisions with reference to the installation of windows and to the designation of so-called "street frontage." To illustrate concretely, I do not think that the public is concerned in the event of the construction of a private dwelling house whether the same fronts on any street for sixteen feet or for any other distance. This is a matter that might concern the inmates but it would scarcely seem that the structure would constitute a menace to the public health or a nuisance for any other reason if it failed to possess the designated frontage. It is doubtless also true that windows suitable to afford proper light should be installed, but it scarcely seems to me that any rigid rule can be laid down upon this matter to which the owners of private property can be made to conform under the penalties named in the bill.

I wish to call your attention to the decision of the Supreme Court of Ohio in *State v. Boone*, 95 N. E. 924. There the court had before it an act of the legislature which was an attempted exercise of the police power of the State requiring certain reports to be made by physicians to the Bureau of Vital Statistics. To comply with the law would have rendered it necessary for medical practitioners to make considerable investigation in particular cases. No compensation for such services was provided for and the court held that the requirements sought to be imposed were unreasonable notwithstanding that the information might be desirable to be possessed by the State and that the public welfare might to a certain extent be served thereby. In disposing of the issue the court said in part:

"The police power is inherent in sovereignty; and its exercise is justified by the necessity of the occasion. Its foundation is the right and duty of the government to provide for the common welfare of the governed * * * While, therefore, a broad discretion is given to the legislature to provide for the general welfare, it necessarily is not an arbitrary or unlimited discretion; for if it were beyond judicial control or review, it would amount to a practical abrogation of all constitutional guaranties of personal rights and the undefined boundaries of legislative power could be extended so as to authorize the worst and most irresponsible form of despotism—a legislative despotism conducted in the name of the people."

The views of the Supreme Court of this State with reference to the

nature and scope of the police power were laid down in the early case of *People v. Plank Road Company*, 9 Mich. 285. It was there declared in substance that legislative powers that can be upheld if at all only as an exercise of the police power must be such as are absolutely required for the safety, comfort or interests of the public. The doctrine thus laid down has been followed in subsequent decisions, among which are *People v. Hulbert*, 131 Mich. 157 and *Allen v. City of Detroit*, 167 Mich. 464. In the first case cited the defendant was a riparian owner of Goguac Lake near Battle Creek and as such proceeded to use the waters of that lake in a manner that was claimed to pollute the water supply of said city. The prosecution was instituted under Act 428 of the Local Acts of 1887 forbidding such pollution and providing a penalty therefor. It was attempted to sustain this enactment as an exercise of the police power, but the Supreme Court, speaking through Justice Moore, held that it was not within the power of the legislature to deprive the riparian owner of his rights and privileges in such manner. The case illustrates the position that the court has taken in protecting private rights of property even as against the exercise of the police power. It would clearly seem that the measure there before the court was much more closely related to the public health and safety than are many provisions, at least, of the proposed measure now under consideration. In *Allen v. Detroit*, it appears that the City sought to erect a fire engine house within a district that was restricted to buildings for residence purposes only. It was contended that under its general police power, the city might ignore the building restriction on the ground that the location of the engine house within the restricted district was necessary for the public good and to protect lives and property in that locality. The court, however, refused to accept this view declaring in substance that such action was an attempt to go beyond proper regulation under the police power and constituted an arbitrary and unwarranted interference with and destruction of private rights. I think it may be safely said that these decisions indicate the position that the court of last resort of the State has taken with reference to measures passed ostensibly under the police power which infringe private rights of property.

For the reasons above cited, and in view of the authorities to which your attention is called, I am unable to advise you that this proposed measure, either with or without the amendments that you have suggested would be valid if passed. If applicable to the entire State, I believe that it would be impossible to sustain it; and if limited in its scope to the larger municipalities, I am still inclined to the opinion that many of its provisions would be viewed as unwarranted. It would also seem that such provisions must necessarily be viewed as an integral part of the act and that the balance might not be sustained with the invalid sections eliminated. As before stated I do not wish to imply that a reasonable housing law, applicable to the cities of the State where such regulations are necessary and proper would be invalid; but I am unable to escape the conclusion that the contemplated measure now before me is too drastic in its provisions to be upheld.

I am returning herewith the proposed amendments submitted with your inquiry.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

BOARD OF SUPERVISORS. May impose conditions before granting permission to construct a dam in a navigable stream.

May 27, 1916.

Hon. Homer H. Quay, Prosecuting Attorney, Cheboygan, Michigan:

Dear Sir—I am in receipt of your letter of the 24th inst. in which you refer to a previous communication addressed to the Attorney General by Herbert S. Baker, a member of the Board of Supervisors of your County, under date of May 15th. Mr. Baker requested an opinion with reference to the conditions that might be attached by the Board of Supervisors to the permission granted to a certain water power company to construct a dam in Pigeon River. In accordance with our usual custom Mr. Baker was referred to you as Prosecuting Attorney of the County and therefore the legal adviser of the Board. In the letter before me you ask that we express our views upon the proposition of law that has been raised.

The specific conditions to which Mr. Baker has referred, and which I infer the Board of Supervisors desires to attach to the required permission, if it is within its power so to do, contemplate the construction and maintenance of roads and bridges across the dam, the payment to the county of a per cent of the gross income received by the power company from the operation of the dam, and preferential treatment for residents of Cheboygan County in the sale and use of electricity so generated. I assume from the apparent status of the matter that Pigeon River is a navigable stream. Such being the case the measure of the power of the Board of Supervisors is indicated by Section 14 of Article VIII of the State Constitution. It is there provided:

“No navigable stream of this State shall be either bridged or dammed without permission granted by the Board of Supervisors of the County under the provisions of law, *which permission shall be subject to reasonable compensation and other conditions as may seem best suited to safeguard the rights and interests of the County and the municipalities therein.* No such law shall preclude the State from improving the navigation of any such stream, nor prejudice the right of individuals to the free navigation thereof.”

The corresponding provision of the prior Constitution was contained in section 4 of Article XVIII thereof. The Supreme Court, in *People vs. Grand Rapids Power Company*, 164 Mich. 121, indicated that the purpose of the constitutional provision, and of the statutes passed pursuant thereto, was to protect the public right of navigation and that the powers of the Board of Supervisors might not be extended beyond such purpose. The framers of the present Constitution, however, inserted the language that is underscored in the above quotation. I am impressed that the same can be construed in no other way than as indicating an intention to confer a broader measure of power upon Boards of Supervisors in this respect than was granted by the corresponding provision of the Constitution of 1850. Not only may the Board now impose such condi-

tions as will protect the public right, but it may go further and safeguard the rights and interests of the County and of the cities and villages therein: Compensation may also be insisted upon, subject to the condition that it shall be reasonable. What would constitute "a reasonable compensation" is of course a question of fact to be determined in view of all the attendant circumstances. It would seem that the Constitution contemplated the imposing of conditions in the event that permission is granted by the Board of Supervisors, of the general character specifically referred to by Mr. Baker. Such being the case there would seem to be no legal objection thereto. The statute (Chapter XVI of the General Highway Law), must, of course, be construed in connection with the provision of the Constitution by virtue of which it was enacted. There is no clause in such statute to which my attention is challenged that can be regarded as abridging the powers of the Boards of Supervisors in this respect; and in any event the mandate of the Constitution must be regarded as controlling. As before stated, it would clearly seem that the language of Section 14 of Article VIII must be regarded as authority for the imposing of conditions of the general character referred to, as pre-requisite to the securing of permission to construct a dam in a navigable stream.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

TAXATION. Railway property in use as such is not subject to local assessment under the General Tax Law.

May 27, 1916.

Mr. George Hilderbrant, Bigrock, Michigan:

Dear Sir—We are in receipt of yours of the 22nd instant wherein you state:

"The S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 12, town 30 N. R. 2 east was deeded to the B. C. G. & A. Ry. Co. for railroad purposes only, and they now occupy the same; its road goes across this 40, it has a depot, engine house, and "Y" upon it, and the company desire that the same be exempt from local taxation. Would the same be exempt?"

In reply you are advised that if the entire forty acre tract is used for railway purposes the same is exempt from local taxation, but if the entire description is not used for railway purposes that portion not in use is subject to local taxation under the General Tax Law.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Cr-v-O

STATUTES. A co-operative Association of creamery companies may not be formed under Act 398 of 1913.

May 29, 1916.

Hon. James W. Helme, State Dairy and Food Commissioner, Lansing, Michigan:

Dear Sir—Your letter of the 24th inst. requesting my views with reference to the legal proposition therein referred to, is at hand. I note that at the present time there are in existence in this State several co-operative creamery companies, several stock company creameries, and also plants owned and operated by individuals. It appears that several of these have been authorized to use the State butter brand as contemplated by Act No. 53 of the Public Acts of 1915. In order to more advantageously sell their product it is desired by several of these creameries to form a co-operative association to be composed of creameries of the various classes above suggested. The question has arisen as to whether or not such an organization may be effected under the provisions of Act 398 of the Public Acts of 1913.

The measure referred to is entitled: "An Act to provide for the organization, regulation and conduct of co-operative companies and associations." The body of the Act, in section one thereof, more specifically defines the purpose of the measure declaring that incorporations may be formed thereunder for "conducting any agricultural, dairy, mercantile, manufacturing or mechanical business in the State of Michigan upon a co-operative plan." It will be noted that the language of the statute contemplates the actual engaging in one of the particular lines of business indicated. I am inclined to doubt if such a co-operative association as is suggested by your letter is within the intent and purpose of the Act. If I understand the situation correctly such an association would not be formed for the purpose of actually engaging in the dairy or creamery business, but rather to assist in marketing the product produced by the individuals, association and corporations actually engaged in producing butter. As suggested, I do not think that such a purpose is within the scope of the Act in question. It occurs to me also that several of those creameries that desire to enter into the arrangement are themselves organized under this Act. Such being the case their right to enter into another incorporation as a member may well be doubted. The authority, and the specific powers, that may be exercised by an incorporation or association are to be determined primarily by reference to the legislative enactment under which it is organized. We find nothing in Act 398 that can be construed as indicating an intention on the part of the Legislature to permit an association formed and operating thereunder to join with others of the same class, or with individuals, to form a more comprehensive co-operative association. Rather the requirements of the Act itself would seem to negative the possibility of such action. I call your attention specifically to Section 16 which imposes liabilities upon stockholders and directors. I think it may be said that it was not within the contemplation of the Legislature passing this measure that any except natural persons might enter into and become members of a co-oper-

ative company or association thus formed. This is suggested by the language of section one and is borne out by subsequent language.

I am constrained to advise you accordingly that the contemplated organization may not be had under this Act. In my opinion there is little chance for doubt that such a purpose is not within the scope of the statute; and there is an equal minimum of doubt as to the right of associations or incorporations to become members of such a co-operative company.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

GAME AND FISH LAW. Conviction of an offense, not to be pleaded in bar when fraudulently procured.

May 29, 1916.

Hon. William R. Oates, Commissioner, State Game, Fish and Forest Fire Dept., Lansing, Michigan:

Dear Sir—You have submitted for our consideration a communication received from Deputy Warden John W. Ireland. From the communication it appears that Deputy Ireland arrested certain persons for spearing fish in the Huron River and instructed them to appear before Justice Campbell at his office in Birmingham on the 18th day of May. Those persons instead of so appearing before Justice Campbell did appear before Justice Pearsons of Milford and pleaded guilty to charge upon which they were apprehended upon a complaint by a constable at Milford. Upon such pleas of guilty they were convicted by the Justice of the peace and each fined \$1.00 and costs. It would appear from the correspondence submitted that the complaint was made by the constable at their solicitation and was for the purpose of escaping prosecution at the hands of your Department. You have requested our opinion as to whether the convictions before Justice Pearsons of Milford might successfully be pleaded in bar of a prosecution for the same offense before Justice Campbell at Birmingham.

In reply you are advised that as a general rule a conviction of an offense before a court of competent jurisdiction is a bar to any further prosecution for the same offense growing out of the same transaction. This rule is not absolute, however, the exception being when the conviction has been fraudulently procured, in which case the State if not represented in the first proceeding may prosecute such case as though no formal conviction had been had. In other words, if the conviction before Justice Pearsons was fraudulently procured by the wrong-doers for the purpose of escaping a prosecution at the hands of your Department and the State was not represented in such proceeding, then in such case the same would not operate as a bar to a prosecution for the identical offense in a court of competent jurisdiction.

I return correspondence herewith.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Cr-v-O

STATE GAME AND FISH LAW. Public have a right to fish in navigable streams from either a boat or by wading in the stream. No public right to fish is non-navigable streams. Question of navigability discussed.

May 29, 1916.

Hon. William R. Oates, Commissioner, State Game, Fish and Forest
Fire Dept., Lansing, Michigan:

Dear Sir—We are in receipt of yours of the 24th instant enclosing correspondence received by your Department relative to the right to fish for trout and other fish in the streams of this State which have been planted with fry furnished by the Michigan Fish Commission; also as to the legal rights of land owners to prevent a person from fishing in such streams either from a boat or while wading in the waters of the same.

That adjacent land owners on inland streams also own the bed of such stream to the center line is a well established principle in this State. This is true with respect to navigable as well as non-navigable streams. As a general proposition, the shore owners bordering on navigable streams may control such stream except that such control must not interfere with the public right of navigation and necessary rights incidental thereto. It has been repeatedly held by the courts of this State that fish are *ferae naturae* and can be taken by any one who has the right to be on the streams, unless forbidden by the statute, citing *Lincoln v. Davis*, 53 Mich. 375, *People v. Collison*, 85 Mich. 105, *People v. Horling*, 137 Mich. 406. From an examination of the various decisions, it would seem that the dividing line which marks the right of the public to fish would be between navigable and non-navigable streams. In other words, it would seem that the right of the public to fish exists with respect to navigable streams, and vice versa, and does not exist with respect to non-navigable streams. In fact, this seems to be the dividing line at common law. Section 1 of Act 121 of the Public Acts of 1891 provides as follows:

“That in any of the navigable or meandered waters of this State where fish have been or hereafter may be propagated, planted or spread at the expense of the people of this State or the United States, the people shall have the right to catch fish with hook and line during such seasons and in such waters as are not otherwise prohibited by the laws of this State.”

This statutory provision seems to be declaratory of the common law right that had theretofore existed rather than the establishment of a public right in derogation of the common law. The right to fish necessarily carries with it the right to reasonably employ the necessary means to accomplish such purpose. Consequently, in our opinion, the public have the right to catch fish with hook and line during such seasons and in such waters as are not otherwise prohibited by the laws of this State upon all navigable streams, and may fish such streams either from a boat or by wading in the waters of the same. There is no public right to fish the waters of the non-navigable streams.

This naturally suggests the inquiry as to what is a navigable stream under the laws of this State? This has been the subject of much litigation in this State. In the case of *Moore v. Sanborne* 2 Mich. 520, it was held that streams of sufficient capacity to float logs to market even though they have not water enough for that purpose all the year around, if they have enough at seasons occurring regularly and sufficiently long to be of public use are navigable; and that the test of navigability as applied to navigable waters is the capability of being used for useful purposes of navigation—of trade and travel in the usual and ordinary modes—and not the extent and manner of such use. In *Turner v. Holland*, 65 Mich. 453, it was held that water may be navigable without a current and might not be with. In *Cole v. Dooley*, 137 Mich. 419, it was held that a stream and lake which were used for floating logs as long as any were tributary and since then for navigation by skiffs and steamers are navigable. In the case of *Burroughs v. Whitman*, 59 Mich. 279, the court was called upon to apply the test of navigability to "Thread River" in Genesee County. In holding the stream to be non-navigable, the court said:

"The most favorable evidence for the defendant shows the Thread river to be a very crooked stream running above this dam five or six miles to get to; varying from 15 to 50 feet in width, its general average being 25 feet; its average depth about two or three feet, being sometimes in the highest freshets from six to seven feet deep in places, and in a dry time so shallow in places that one can cross it without going over shoe. This pond is only a mile or so above where the Thread empties into the Schwartz creek and we have no testimony as to the character of the stream, except for about six miles above the pond. It has never been used for the floating of logs or any other commodity. It has never been a water highway for purposes of travel or transportation. Once or twice a year some adventurous fisherman has pushed or poled a canoe or boat up and down it for a few miles. It is not a meandered stream, and the farmers along it have fences or gates across the stream to mark the lines of their farms. We have a history of this stream for over 50 years, and yet this most favorable view of this creek must also be taken in connection with the fact that its depth of water is taken above the mill-pond, and is no doubt more or less increased by the setting back of its waters. It also appears, without contradiction, that there are plenty of places called 'rapids' where the depth of water is not over four or six inches, except in times of high water or freshets; and that the periods of high water are of very short duration; and no advantage of such freshets has ever been taken for floating purposes of any kind. Under the facts this stream does not come anywhere within or near the most liberal definition of a navigable stream, in the books."

It will thus be seen that no hard and fast rule may be laid down as to what is and what is not a navigable stream any more than the rule that the stream must be capable of being used for navigation by boats or for the purpose of floatage. We do not wish to be understood as say-

ing that the owners of the shore have any property right in fish migrating through non-navigable streams or that such owners may in any way obstruct the passage of fish through such streams, but simply desire to be understood as saying that in our opinion the public have no right as such to use such streams for the purpose of fishing.

Trusting that this sufficiently answers the inquiry submitted, I am,

Very respectfully,

GRANT FELLOWS,

Attorney General.

Letters submitted returned herewith.

Cr-v-O

COUNTY OFFICERS. A woman is not entitled to hold the office of County Clerk or Register of Deeds.

May 29, 1916.

Mr. Blair F. Scott, County Clerk, Lake City, Michigan:

Dear Sir—Under date of May 22nd, you have requested me to advise you if the office of county clerk and register of deeds could be held by a lady or if only such offices as school commissioner, etc., are held by them.

In reply would say that from an examination of the Constitution and the statutes of this State I find that neither make provision relative to the qualifications of persons for the offices you mention. In the case of County School Commissioner and a few other offices the statutes provide certain qualifications of persons before they can enter upon the discharge of the various offices. Resort must be had, therefore, to the decisions of the court upon this question. Our Supreme Court has passed upon this question in the case of Attorney General vs. Abbott, 121 Mich. 540, and we will be controlled by the decision in that case in arriving at a determination of the present question. That was a quo warranto proceeding brought by Horace M. Oren, Attorney General, to try the title of Merrie H. Abbott to the office of Prosecuting Attorney of Ogemaw County. Merrie H. Abbott, the respondent, a woman of the age of 21 years and upwards, was elected to the office of Prosecuting Attorney of Ogemaw County at the general election held on the 8th day of November, 1898. She qualified and entered upon the discharge of her duties. An information in the nature of a quo warranto was filed against her to try her right to the office. The only question raised was whether a woman is eligible under the Constitution and laws of this State to hold such office.

Section 3, Article X of the Constitution reads as follows:

"In each organized county there shall be a sheriff, a county clerk, a county treasurer, a register of deeds, and a prosecuting attorney chosen by the electors thereof once in two years, and as often as vacancies shall happen, whose duties and powers shall be prescribed by law."

Justice Long in delivering the opinion of the Court used the following language:

"There being no express provision of the Constitution or the

laws of the State conferring upon the respondent the right to hold this office, the question must be determined by the principles of the common law, and the manner in which those principles have been construed in this State for the past years. It is conceded that the respondent is not an elector, and that she could not vote for a candidate for this office. Section 1, Art. 7, of the constitution, provides who shall be electors. There can be no question of the common-law rule that a woman cannot hold a general public office, in the absence of express constitutional or statutory authority conferring upon her such right. If she is eligible to this office, then she is eligible to any constitutional office within the State. Judge Cooley, in his work on Principles of Constitutional Law (page 257), in discussing the question of eligibility to office, says, 'When the law is silent respecting qualifications to office, it must be understood that electors are eligible, but no others.' For more than 60 years this has been regarded as the settled law of this State. It commenced when this State was admitted into the Union, and, during all the time since, no one, to our knowledge, has ever insisted that women are eligible to those offices which must be filled by the votes of the qualified electors of the State or other municipalities."

This case is supported by the following: State vs. Smith, 14 Wis. 497; State vs. Murray, 28 Wis. 96; Robinson's Case, 131 Mass. 376; Atchison vs. Lucas, 83 Ky. 451.

It is noteworthy that Justice Moore dissented from the majority court setting forth his reasons why the office might be held by a woman. Your attention is challenged to a reading of the case wherein the authorities are reviewed and the court's reasons set out at length. It is sufficient for a ruling on this question to say that we adopt the views entertained by the Michigan Supreme Court and particularly those of Justice Hooker who wrote a concurring opinion when he remarked that:

"Other States are mentioned where, under statutes or decisions, a somewhat different view from that entertained by me is taken, and it must be admitted that there is some conflict in the authorities; but I think the weight of authority, and the logic of the case, support me in the conclusion that the privilege of holding general public office has not been acquired by woman, and that only a constitutional provision or an Act of the legislature can give it to her."

Trusting this will serve to be of assistance to you, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Mo-pi-O

PRIMARY ELECTION LAW. ADVERTISING MATTER. Candidates cannot use envelopes containing printed matter unless the envelopes are reduced to the size authorized by statute.

May 29, 1916.

Mr. James L. McCormick, Prosecuting Attorney, Bay City, Michigan :

Dear Sir—I am in receipt of your letter of May 23rd in which you ask for an opinion as to whether or not a candidate for nomination for the office of Lieutenant Governor may have printed advertising matter on the back or front of envelopes carrying his campaign letters, including the cut of the candidate, the cut and printed matter on the front or back of the envelope to be the size and style provided by law as to cards.

In reply thereto would say your attention is challenged to the provisions of Section 48 of the Primary Election Law which makes it unlawful for any person after he has declared himself a candidate for any office included in the provisions of the Act.

“To print or cause to be printed, pay or cause to be paid for printing, circulate or distribute, or cause to be circulated or distributed, any campaign cards, handbills, banner, poster or other advertising matter larger than two and one-fourth inches in width by four inches in length, except postal cards and letters, or which contains any lithograph, half-tone engraving, photograph or other likeness of himself, which likeness is larger than one and one-half inches in width by two inches in height.”

In view of the foregoing you will observe that the statute limits the size of the advertising matter to two and one-fourth inches in width by four inches in length. I am of the opinion that if the candidate desires to use the letters in the manner suggested by you that he would have to comply with the provisions of this Act. In other words, he would not be permitted to use the envelopes containing the printed matter unless the envelopes were reduced to the size provided in Section 48 of the Act.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Mo-pi-O

BOARD OF SUPERVISORS. May not refuse to allow a claim under Act 235 of 1911 on the ground that the deceased left no dependents.

HIGHWAY LAW. The compensation of county road commissioners is paid out of the general fund of the county notwithstanding the exemption in section 31 of Chap. IV.

SALARY. The fixing of compensation on a per diem basis is not prescribing a salary within the meaning of section 5 of Act 168.

June 5, 1916.

Mr. Ward B. Connine, 401 State Bank Building, Traverse City, Mich.:

Dear Sir—Your letter of recent date in which you request an opinion upon several questions of law therein raised is at hand. Your first ques-

tion involves the construction and application of Act 235 of the Public Acts of 1911. Said measure provides for the payment by counties of the burial expenses of honorably discharged soldiers, sailors and marines, and the wives or widows thereof, and also army nurses in certain cases. The act does not apply, however, unless the deceased was a resident of the State of Michigan and leaves an estate both real and personal not exceeding the sum of \$1,500. In the particular instance to which you refer, it appears that the widow of an honorably discharged Union soldier has recently died in your county leaving property valued at approximately \$800. At the time of her death, there was no one dependent on her for support. The question arises as to whether or not the board of supervisors may properly refuse to authorize the payment of the bill for funeral expenses in the sum of not to exceed \$55.00, the limit fixed by the statute.

The case that you have mentioned would seem to be without question within the scope of the act. The legislature has not seen fit to make the leaving of dependents a condition for the payment of such burial expenses, or the reimbursement of one who has paid them. Rather the liability of the county becomes absolute in any case where the conditions set forth in the statute actually obtain. In such a case it is the duty of the board of supervisors to allow the claim subject to the limitation indicated. Doubtless the obligation might be enforced in an appropriate proceeding instituted for that purpose.

Your second question arises under Chapter IV of the general highway law, which chapter governs the operation of the county road system. I note that Grand Traverse County is now operating under said system and that its board of county road commissioners is composed of three members. You state also that there are three townships in the county that come within the exception contained in section 31 of the Chapter referred to. Insofar as it is material here, said section reads as follows:

"Any township which may have adopted the township road plan provided for in sections 26 and 27 of Act 230 of the Public Acts of 1895, as originally set forth and which has raised money and built roads in good faith, shall continue under such plan until by a majority vote of the electors of such township voting thereon, the township shall abolish such system; and while under such system, they shall not, without their consent, be liable to any tax for the county road system * * *."

It seems to be the intent of the law, as indicated by the provisions of Chapter IV, that the compensation of county road commissioners shall be paid out of the same funds from which other county officers receive their salaries. The precise point raised by your inquiry is whether or not such method of payment violates the clause of the statute above quoted in that it requires the townships operating under the so-called township road plan to contribute to a "tax for the county road system." It does not occur to me that such a construction is a tenable one. I believe rather that the term "tax" as used in section 31 should be deemed to have reference to the tax for which specific provision is made in this chapter. In other words, it was the intention of the legislature to exempt such a township from the payment of the tax contemplated by section 20, and also from contributing to a fund raised for the purpose of retir-

ing county road bonds. It is, of course, a basic proposition that any exemption from taxation is to be strictly construed; and in determining the scope of the language used in section 31, we must take into account the provisions of the preceding sections of the chapter and must likewise bear in mind the evident purpose and intent of the legislature. I scarcely think that any part of the money raised by a county for the payment of compensation to its officers would be regarded as a "tax for the county road system," notwithstanding that the members of the board of county road commissioners are thus compensated. As before indicated the provisions of the chapter relating to the raising of money by taxation would seem to negative the idea that such compensation is to be paid out of the county road funds. The provision found in section 7 to the effect that the expense of securing a bond shall be paid from the county road fund would seem to strengthen the inference above suggested.

Your third question is: "Can the compensation of the county sealer of weights and measurements be based on a per diem basis? In reply I would say that section 5 of Act 168 of 1913, which section confers upon the board of supervisors the discretionary authority to appoint a county sealer of weights and measures, states that such officer "shall be paid a salary to be determined by said board." The point at issue is, therefore, whether or not payment in the manner suggested by your question can be regarded as a granting of a salary as such term is used in the statute. Generally speaking, the term is taken to mean periodical payments made for services performed. Of course, the context in a given case might suggest a different definition; but there is nothing in the act here involved that can in my opinion be taken to indicate that the legislature used the word in a sense other than the ordinarily accepted one. The Century Dictionary has defined "salary" to be "The recompense or consideration stipulated to be paid to a person periodically for services." Other leading dictionaries give substantially the same definition. As a basic proposition, it is doubtless true that a salary is paid, not upon the basis of actual services performed, but rather because of the incumbency of the particular office or position to which such salary is incidental. This idea was suggested by the opinion of the Supreme Court in the case of *Benedict v. U. S.*, 176 U. S. 357, where it was said:

"The word 'salary' may be defined generally as a fixed annual or periodical payment for services depending upon the time and not upon the amount of services rendered."

The decision of the Supreme Court of Ohio in *Gobrecht v. City of Cincinnati*, 51 Ohio State 68, is, I believe, squarely in point. That case involved the construction of a provision of the State Constitution forbidding a change in salary of any officer during the term. The question arose as to whether or not a per diem allowance of \$5.00 per day allowed by statute to members of a certain board for services performed in attending meetings of such board could be regarded as a salary within the meaning of such constitutional provision. It was held that per diem compensation could not be deemed to be a salary, and that in consequence the inhibition of the constitution did not apply. I am impressed that these cases and the definitions suggested, lay down the correct rule and that a statutory provision requiring the fixing of a salary to be paid to the incumbent of a particular office is not complied with by establishing

a per diem compensation. This conclusion is applicable in the specific instance that you have stated.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

TAXATION. A sanatorium organized under Act 242 of 1863, as amended, is entitled to be exempt from taxation on property used for its purposes.

June 5, 1916.

Board of State Tax Commissioners, Lansing, Michigan:

Gentlemen—you have recently submitted to this Department an inquiry as to whether or not the property of St. Joseph Sanitarium located in the City of Mt. Clemens is exempt from taxation. It appears from the facts before us that the property in question is owned by a corporation organized under and governed by Act 242 of 1863 as amended. Section 7 thereof provides for an exemption from taxation. As amended by Act 41 of 1915, said section reads as follows:

“The property on which said asylum or institution building stands together with said building and equipment, shall, while occupied for the objects and purposes thereof, be exempt from taxation: Provided, however, That if a portion of said property or building is leased for commercial purposes, then a tax shall be levied only upon the value of that part of the building or property which is leased for commercial purposes, and that portion of the building or property occupied for the purposes for which such hospital or asylum was incorporated shall be exempt and shall be excluded in the estimation of the value of the taxable property of the corporation.”

I assume in the instant case that no part of the property involved is actually leased for a commercial purpose but rather that all of such property is used for a purpose indicated in the statute and in the articles of incorporation on file in the Department of State. If such is the case, it would seem that the exemption may properly be claimed in conformity with the statute. In the case of *Sanatorium Association v. Battle Creek*, 138 Mich. 676, the Supreme Court indicated the construction to be placed upon the exempting clause in this act as it stood prior to the amendment of 1915. I do not think that it can be said that such amendment has in any way limited the scope of the exemption. Rather by implication it would seem that it suggests a more liberal application.

If such property were to be used for the realization of a substantial profit, it is quite possible in view of certain language used in the opinion of the court in the case cited, that the exemption might be held to be forfeited. It does not appear, however, that such is the case in the present instance, but that the attendant facts and circumstances are such as to render the decision of the Supreme Court squarely in point and therefore controlling. It is my opinion accordingly that the exemption on

the property must; if the facts above assumed are correct, be granted to the claimant.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

TAX LAW. Assessment of live stock considered.

June 5, 1916.

Mr. George Girling, Barton City, Michigan:

Dear Sir—You have recently requested the views of the Attorney General with respect to a couple of matters that have arisen under the tax law. The first proposition submitted refers to the instance of a party who purchases live stock after the making of the assessment. Such stock is pastured in the Township during the summer by the owner, and is intended to be re-sold in the Fall. I assume that such owner is a resident of your Township. If such is the case the property, if purchased before the first of May should be assessed by you as Supervisor. If purchased after the first of May, however, it should not be so assessed. I call your attention to Section 17 of the General Tax Law which would seem to be controlling on the matter.

The second case referred to has reference to the assessment of live stock owned by a party who lives in another Township, but who owns land in your Township. It appears that such person pastures his stock in Millen Township during the summer. I infer from your statement that such property is kept during the winter at the place of residence of the owner. If such is the case it should be assessed there, rather than in Millen Township. Generally speaking personal property is required to be assessed to the owner in the Township in which he is an inhabitant. It is provided, however, in the second subdivision of Section 14 of the General Tax Law that all animals kept throughout the year in some other Township shall be assessed where kept. You will note that the exception to the general rules does not apply unless the stock is kept "throughout the year" in a taxing district other than that where the owners reside. It follows in consequence that if, in the instance to which you refer, the stock is kept during the winter months at the place of residence of the owner, it should be assessed there and not in the Township where it is pastured during the summer. I call your attention in this respect also to the proviso in section 17 of the General Tax Law to the effect that personal property belonging to one who resides upon contiguous tracts or parcels of land lying in two or more assessment districts shall be assessed in the district where the owner resides.

Trusting that these suggestions will give you the desired information, I am,

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

TAXATION. A bond substituted for a prior bond under Acts 139 or 142 of 1913 can not be exempted without the payment of the specific tax.

June 5, 1916.

Mr. Charles H. Jasnowski, Prosecuting Attorney, Detroit, Michigan:

Dear Sir—This Department is in receipt of your letter of the 1st inst. with which you enclose copy of a communication addressed to the County Treasurer of Wayne County. You have asked for an opinion upon the matter therein referred to which is set forth in the following language:

“Some companies issues coupon and registered bonds, which are interchangeable—for example:

(a) A registered bond of \$5,000.00 is issued, and it is stated on it that it is issued for five \$1,000.00 coupon bonds. The specific numbers of this coupon bond (such 10, 11, 12) are written on the back of the registered bond, and it is further stated that such coupon bonds are held by the Company to be exchanged for such registered bonds at any time desired, when registered bond will be cancelled.

(b) Registered bonds of other Companies do not state the specific numbers of the coupon bonds which are held for exchange. On registered bond it is only stated that coupon bonds will be given in exchange for such registered bond when registered bond will be cancelled.

In no companies do the date and number of the registered bond correspond to the number and the date of the coupon bond, because registered bonds are issued from time to time against the coupon bonds. These coupon bonds are all of the same date, which is the date of the mortgage. Registered bonds are dated and numbered not according to the date of the mortgage, but according to the date they are made out—just the way stock certificates would be dated and numbered, altho the stock represented by all the different certificates would be the same. Some registered bonds have been made tax exempt in the State of Michigan by paying one half of one per cent, but the owner of these bonds now desires to obtain coupon bonds for registered bonds.

Will you issue new receipts for coupon bonds without extra charge, inasmuch as it is making tax exempt exactly the same bonds which are already tax exempt. Of course, the registered bond would be cancelled by the company when coupon bonds are issued in its place. If necessary, a letter may be procured from the companies stating that registered bonds have been destroyed and coupon bonds re-issued in their places, thus assuring the County Treasurer that the tax is exempting the same bonds in both cases.”

It does not occur to me that either Act 139 of 1913 or Act 142 of 1913 as amended, can be construed as authorizing the County Treasurer to take the action suggested by this inquiry. Act 139 requires that the

treasurer shall endorse upon the bond the fact that the specific tax has been paid; while Act 142 requires either such endorsement or the granting of a receipt. Under both measures a record of such endorsements or receipts must be kept together with a description of the bonds. Had it been the intention to permit a substituted obligation to be exempted without the payment of a tax thereon it seems logical to believe that the Legislature would have incorporated in these Acts some provision to that effect. It occurs to me that each County Treasurer should follow the provisions of these measures literally, or as nearly so as possible, and should attempt no act not contemplated thereby. I am constrained to the opinion accordingly that a bond that is substituted for another obligation in the manner set forth may not be exempted without the payment of a specific tax thereon. The fact that each of the measures mentioned contemplates the payment of the tax on specific obligations, of which a record must be kept, must, I believe, be taken to forbid any such substitution insofar as the exemption is concerned. While the new bond stands, as between the parties to the contract, in lieu of the prior obligation, the fact necessarily remains that it is not the same instrument upon which the specific tax has been paid, nor is it identical therewith.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

ORCHARDS AND VINEYARDS. Under Act 91 of 1905 the State Board of Agriculture may not establish a quarantine against the importation of white pine nursery stock.

June 6, 1916.

Professor L. R. Taft, State Inspector of Nurseries and Orchards, East Lansing, Michigan:

Dear Sir—I have before me your letter of the 5th inst. and note that a disease of the white pine, commonly designated as “white pine blister rust” is more or less prevalent in several of the States. It appears, however, that it has not as yet been discovered in Michigan and it is desired if possible to prevent its gaining a hold here. Owing to the nature of the disease the ordinary certificate of inspection that is required when nursery stock is brought in from another State, is not sufficient to afford an effective safe-guard. The question therefore arises as to whether or not a quarantine may be established and enforced against the bringing in of white pine nursery stock from those States in which the disease is known to exist.

The powers of the State Board of Agriculture along this line are measured by the provisions of Act 91 of 1905, entitled: “An Act to prevent the importation from other States and the spread within this State of dangerous insects and dangerously contagious diseases affecting trees, shrubs, vines, plants and fruits, and to repeal all Acts or parts of Acts that contravene the provisions of this Act.” The provisions of this measure are in conformity with the general purpose suggested by the title. The authority to establish a quarantine whenever the same may be nec-

essary or expedient, in the judgment of the Board, is not however conferred in express terms. Neither do I think that such power can be inferred from any clause of the Act. The title is undoubtedly broad enough to warrant the inclusion in the body of the measure of some provision permitting the establishment of a quarantine under circumstances calling therefor, but for some reason the Legislature saw fit to make no such provision. In the absence thereof I am constrained to the opinion that such action as is suggested by your inquiry must be regarded as unwarranted. I infer that in practically all other cases the safe-guards that are specifically provided have been found to be adequate; and also that the disease known as "white pine blister" is of recent discovery in this country. Very likely it was not called to the attention of the Legislature at the time when this measure was passed, with the result that no effective provision was made for combating it. However, we must construe and apply the statute as we find it and I do not think that any construction other than as above suggested can be upheld until such time as the Legislature can take action on the matter there would seem to be no alternative other than to insist that such measure of protection as is granted by the Act shall be rigidly observed.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

HEALTH LAW. Villages may not co-operate together for the establishment of a health district with a joint health director.

June 6, 1916.

Hon. John L. Burkart, Secretary, State Board of Health, Capitol:

Dear Sir—You have recently referred to this Department a communication addressed to you as Secretary of the State Board of Health by Mr. Samuel T. Douglass of Detroit, and have asked that an opinion be given to you upon the legal propositions therein suggested. It appears from said letter and from copy of manuscript submitted therewith that it is desired to outline and put in operation a plan whereby the Villages of Grosse Pointe Park, Grosse Pointe Farms, Grosse Pointe Village and Grosse Pointe Shores may have a Joint Health Director. It is indicated that each Village council shall, pursuant to the statute, create a Local Board of Health, to be composed of the Village health officer; and the four officials thus selected, one being chosen in each Village, are to constitute a so-called "Health Commission" and the Director above mentioned is to be appointed thereby, and presumably responsible thereto. I infer from the letter of Mr. Douglass that each health officer, acting as a Board of Health, will appoint the same physician as his deputy and that such physician shall be the Director.

Without going into the details of the plan, I am constrained to the opinion that it can not be regarded as authorized by the statute. It does not occur to me that the Board of Health of the Village can be constituted to be composed of a single member, and such member to be also the health officer. Undoubtedly the term "Board" is used in its ordinary sense and

hence must be taken to mean an organization consisting of more than one member.

It is obvious that the plan suggested really calls for the creation of a health district to be composed of the four villages mentioned. The laws of Michigan relating to the public health do not in their present form contemplate the establishment of such a district. I am impressed that legislative authority must be obtained before any practical organization of this kind can be established. In other words, the legislature of the State must provide therefor by proper and appropriate legislation. Undoubtedly the theory of the law at the present time is that each Village through its health board and health officer shall constitute the unit of government in the administration of the law on this subject, subject of course to the statutory authority given to the State Board of Health. A plan of this character is clearly repugnant to that theory and must in consequence be regarded as without authority of law.

In practical operation I assume that the compensation of the so-called Health Director is to be pro rated among the several villages concerned. Here again we meet the obstacle before suggested, namely, that the statutes of the State do not contemplate nor warrant the employment by Villages of a physician who shall act in the capacity indicated. There might perhaps in certain cases be a certain measure of voluntary co-operation; but in the instant case the plan outlined must necessarily involve the raising of money by taxation in these four villages to pay the expenses and salary of the joint health director. We can scarcely regard the physician holding this position as the individual employe or officer of the different villages, because to do so necessitates the overlooking of the real object sought to be accomplished. I believe that in considering a matter of this kind we must necessarily look to the substance rather than solely to the form.

Other considerations, based upon a possible delegation of power and also upon the requirement of the statute that each elective or appointive officer of the Village shall be a qualified elector thereof, are also involved; but I scarcely think that it is necessary to go into these phases of the question in detail. It would seem that the objection suggested at the outset as to the lack of authority of law for the establishment of a plan of this nature must be regarded as fundamental.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

TAXATION. In the absence of statutory restriction local assessing officers may assess property at a higher figure than that placed upon it by the State Tax Commission.

June 6, 1916.

Mr. Charles A. Jones, Supervisor, Cassopolis, Michigan:

Dear Sir—I am in receipt of your letter of June 1st, in which you ask if a Supervisor has a right to raise the valuation on property that the State Tax Commission has placed its figures on, the property being in the same condition it was at the time the Commission fixed its figures.

In reply would say that Act 17 of the Public Acts of 1911 amending

the General Tax Law of the State, contains the following language: "The action of said Board or member done as provided in this Act shall be final. When any property has been reviewed, assessed and valued by said Board as herein authorized, such property shall not be assessed or valued at a lower figure within a period of three years, where the property remains substantially the same, without the written consent of said Board."

The Constitution requires that all assessments upon property shall be on the cash value thereof. It will be noticed from the above quotation that such property shall not be assessed or valued at a lower figure within a period of three years. It will also be noticed that the Act does not make provision for the assessing of property at a higher figure. In the absence of statutory restriction I am of the opinion that the assessing officer may assess property which has already been assessed by the State Tax Commission at a higher figure than that placed upon it by the Tax Commission.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Mo-pi-O

JURORS. Are not entitled to extra mileage when excused and permitted to return home during a term and then called; nor to compensation for any period for which they are excused.

June 7, 1916.

Mr. Otis Huff, Prosecuting Attorney, Marcellus, Mich.:

Dear Sir—Your letter of recent date requesting the views of this Department as to the construction to be placed on section 14466 Howell's Annotated Statutes, 2nd edition, is at hand. Said section was incorporated into the Judicature Act and appears as section 5 of Chapter 48 thereof. It makes provision for the fees of jurors, declaring that

"Each grand and petit juror and each talesman shall be entitled to receive three dollars for each day's attendance, and one dollar and a half for each half day upon any term of the circuit court, or before any court of record, and ten cents for each mile traveled in going and returning by the nearest traveled route to be paid out of the county treasury on the certificate or order of the clerk or judge of such court."

The first question that arises is whether or not a juror may receive mileage for going to and from the place where the circuit court is in session more than once during the term. Upon this point, I would say that this Department has heretofore held that circuit court jurors who are excused during the term and subsequently recalled are not entitled to mileage if they choose to go to their homes. Judge Bird, when Attorney General gave an opinion upon this matter which is found on page 151 of the Annual Report of the Attorney General for the year 1908, and held therein that jurors are not entitled to extra mileage either upon a regular adjournment of the court during the term as from Saturday to Monday, nor when they are excused by the court for any definite time

during the term. This holding was approved by Judge Kuhn during his administration in an opinion that is found on page 389 of the Annual Report for 1912.

The further question is also suggested by you as to whether or not jurors who are excused for a definite time are entitled to compensation as though they were actually serving. I am impressed that the decision of the Supreme Court in the case of *Emmer v. Bostock*, 130 Mich. 341, is controlling upon this proposition. It was there held that the compensation of jurors is limited by the statute to the days of actual attendance and that no juror is entitled to pay for any period during which he is definitely excused from attendance. It would seem that the rule is applicable regardless of the length of the period for which a juror is excused. In other words, even though excused for one-half day only, the decision of the court would seem to imply that he is not entitled to pay therefor.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. Township may not receive State reward for improvement of village streets but the burden of making such improvements in accordance with section 10 of Chapter II rests on the township.

June 7, 1916.

Mr. William Brinker, Village Pres., Kinde, Michigan:

Dear Sir—Section 10 of Chapter II of the General Highway Law provides in substance that highways in any incorporated village which were established by the township before the incorporation of such village may share in the highway improvement fund of the township, under the direction of the highway commissioner and town board. I infer from your inquiry of recent date that in a certain instance a road that is embraced within the scope of this division of the statute has been maintained by the village since its incorporation in 1903. It appears that some question has arisen as to whether such fact relieves the township from its obligation. It is my opinion that it cannot be so viewed.

Quite possibly the village has made improvements, the expense of which should have been borne by the township, payment therefor being made out of the highway improvement fund. It would scarcely seem, however, that this should be given the effect of thereafter relieving the township. You will note that the general highway law makes no provision for the *repair* of village streets by the township; but refers only to the improvement, meaning, of course, the permanent improvement of the highway. Accordingly the expense of repairs and the duty of making same devolve upon the village. Quite possibly, the money that has been expended on the particular street to which you refer since the incorporation of the village was for the repair of the same and not for any permanent improvement. If such was the case, the work was properly taken charge of by the village.

Under the provisions of the highway law relating to the payment of State reward for improved road, this Department was held that a village

street, even though improved by the township, may not earn such reward. This opinion is based primarily on section 7 of Chapter V of the general highway law (which chapter governs the payment of State reward), which reads as follows:

"The terms 'roads' or 'public roads' or 'public wagon road' in this act shall at all times be construed to mean the leading public wagon roads outside of incorporated villages and cities."

The only inference that can be drawn from this provision is that the legislature intended to exclude the streets of municipalities from the public highways of the State on which reward may be carried. Under section 18 of Chapter IV of the highway law, as amended, at the last session of the legislature, we have held that such a street when taken over as part of a county road and improved by the county road commissioners in accordance with the statute may become entitled to draw the reward, but the amendment referred to makes no reference to townships nor the improvement of roads thereby. In consequence it can scarcely be regarded as modifying the obvious purpose of section 7 of Chapter V except as indicated. Notwithstanding the amendment of 1915, it is the opinion of this Department that a township may not receive State reward for the improvement of any street or highway within an incorporated village.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

DENTAL LAW. A prosecution may be brought for each violation thereof and a license may be revoked for false advertising.

June 7, 1916.

Dr. E. G. Weeks, Secretary, Michigan Dental Society, Saginaw, Michigan:

Dear Sir—Your letter of recent date requesting the views of this Department upon certain questions arising under the statutes of the State relating to the practice of dentistry, is at hand. I note that you have been appointed by the State Board of Dental Examiners to investigate certain violations of the law and to institute prosecutions in proper cases.

In reply to your first inquiry I would say that under section 9 of the Statute in question, as amended by Act 183 of the Public Acts of 1913, any person who practices or attempts to practice dentistry without a license or without having his license properly displayed is guilty of a misdemeanor and may be punished in the manner prescribed in said section. Each separate act of practicing, or attempting to practice, must be deemed to be a distinct offense, for which prosecution may be started. It would seem, therefore, that a number of prosecutions might be brought against the person to whom you have referred in connection with the inquiry along this line.

Section 4 of the Act permits the Board of Dental Examiners to revoke or suspend the license of any dentist for certain specified causes. Among

such causes is "unprofessional conduct" which is declared to include, among other things, "the advertisement of dental business or treatment or devices in which untruthful or impossible statements are made." The question arises, in view of this provision, as to whether or not a dentist who advertises "painless" methods is liable to have his license revoked or suspended. If such form of expression is untruthful or impossible it would seem to be squarely within the terms of the statute. Whether it is so is, of course, a question of fact rather than one of law. If the practicing of dentistry without pain is an impossibility, or if the particular practitioner does not in fact fulfill the terms of his advertisement it would seem that adequate grounds for the revocation of the license must be deemed to exist. It occurs to me that the same conclusion must follow in the case of one who in any way designates himself as a "painless" dentist. In other words, I do not think that one should be permitted to adopt a name that is in itself an advertisement and which so viewed, is not truthful. The length of time that the term has been so employed can scarcely be regarded as conferring any continued right to use the same, in view of the positive provisions of the statute. Section 1 of the dental law, as amended at the Session of 1913, contains a proviso designed to protect firm names that were in use at the time when said amendment became operative; but I do not think that that proviso was intended to authorize the use of any names that can be said to constitute a deceptive advertisement.

It does not occur to me that a dentist who advertises certain prices in the manner suggested in the postscript to your letter thereby violates any positive provision of the statute. Such methods may not be regarded as ethical in the profession, but this would scarcely seem to be "unprofessional conduct" as such expression is used in Section 4, nor do they constitute a misdemeanor within the meaning of Section 9.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

STATUTES. Act 139 of 1909 relative to the establishment of county sanatoria is applicable to St. Clair County notwithstanding the provisions of Act 391 of the Local Acts of 1895.

June 8, 1916.

Mr. Carol F. Walton, Secretary, Michigan Anti-Tuberculosis Association, Ann Arbor, Michigan:

Dear Sir—Your letter of recent date with reference to the application of Act 139 of the Public Acts of 1909, as amended, is at hand. I note that there is a local measure in force in the county of St. Clair passed by the legislature in 1895, copy of which you have submitted. Said local act was designed to make townships, cities and villages primarily liable for the care of persons afflicted with contagious diseases, relieving the county except in instances where the board of supervisors considered that a township or municipality should be relieved either in whole or in part. In view of this local act, it appears that some question has arisen as to whether or not the statute of 1909 referred to can be regarded as applicable to the county of St. Clair.

The public act referred to was intended to provide for the maintenance and construction of hospitals and sanatoria within the various counties of this State. I am impressed that it was the intention of the legislature that the measure should be in full force and effect in every county. It is significant to note that no exceptions were incorporated therein with reference to any county or counties. Such being the case, I believe that the act must be regarded as superseding any inconsistent or prior legislative enactment insofar as any inconsistency exists. In the instant case, however, it does not seem to me that these two measures are necessarily irreconcilable. In other words, a hospital or sanatorium may be established in the county of St. Clair in conformity with Act 139 of 1909, as amended, and the provisions of the local act referred to may be observed also. If the result in any particular instance is a conflict, the general act must in my opinion be regarded as controlling.

Very respectfully,

GRANT FELLOWS,

Attorney General.

Ca-v-O

FIRES. A Deputy Sheriff may not exercise the functions of a fire warden.

June 12, 1916.

Mr. Thomas B. Wymen, Secretary, Northern Forest Protective Association, Munising, Michigan:

Dear Sir—In reply to your inquiry of recent date I would say that my attention is called to no statute of this State authorizing a Deputy Sheriff to exercise the power of a fire Warden, and to call out men for fighting forest fires. Act 249 of the Public Acts of 1903, as amended, provides for the appointment and the duties of fire Wardens but no mention of the functions of Deputy Sheriffs seems to be contained therein. Section 11654 of the Compiled Laws of 1897 would seem to be of general application throughout the State and empowers Justices of the Peace, the Supervisor and the Commissioner of highways to order out inhabitants of the Township who are liable to work on the highways and who reside in the vicinity where the fire is raging. The Act of 1903 is declared to be applicable only in that portion of the State lying "North of the North line of Township 20 North. It does not occur to me that the provisions of the general law with reference to the powers of deputy sheriffs can be regarded as sufficiently broad to permit such officer to exercise the functions of a fire warden. I am constrained to the opinion accordingly that your inquiry must be answered in the negative. Quite possibly the Legislature has not conferred such authority on members of the Sheriffs force in order that a possible conflict of jurisdiction may be avoided, considering that the provisions made for dealing with forest fires were adequate to accomplish the purpose sought.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

HEALTH. Under Act 453 Local Acts 1907 a Township in Sanilac County is not required to pay a bill incurred on behalf of one who is able to pay himself and such township has the same right of reimbursement that a County would have under the general law.

June 12, 1916.

Mr. William Long, Township Clerk, Peck, Michigan:

Dear Sir—Your letter of the 10th inst. with reference to the construction of Act 453 of the Local Acts of 1907, is at hand. The measure referred to is entitled: "An Act to make townships, and cities in Sanilac County primarily liable for the payment of all claims incurred in the care of persons sick with contagious diseases or diseases dangerous to the public health, or incurred in preventing the spread of such diseases, where said county is now primarily liable for such payment." The provisions of the body of the measure are in accordance with the general purpose as indicated in the title. Undoubtedly it was the purpose of the Legislature in the enactment of this statute to impose upon Townships and cities in your County the same measure of liability that, under the general law, is imposed upon counties. The last clause in the title is especially significant and indicates that it was not the intention to impose any greater burden upon townships and cities with reference to the care of contagious disease cases than the general statutes of the State relating to the public health have imposed on counties.

Under Section 4424 of the Compiled Laws of 1897, as amended, such assistance and care as is given to any person affected with a contagious disease must be "at the charge of the person himself, his parents or other persons who may be liable for his support, if able." Construing this section of the statute in connection with the Local Act above referred to, it follows that a Township may not be held liable in any case where the person for whom such expense has been contracted is able to pay the same or if those who are liable for his support are able so to do. Furthermore it is my opinion that any Township or City in your County that actually pays such a claim would have the same right to maintain an action for reimbursement that a County would have, under proper circumstances.

I believe that these suggestions cover your specific inquiries.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

TAXATION. The assessing officer should value real estate as of the day when the assessment is actually made.

June 15, 1916.

Mr. J. A. Matzinger, Frankfort, Michigan:

Dear Sir—Your inquiry of the 14th inst. with reference to the assessment of certain property under the General Tax Law, is at hand. Your

inquiry supposes an instance in which a building is erected on property between the second Monday in April and the first Tuesday in June. The point at issue is whether or not the Supervisor, or other assessing officer, should take the value of such building into consideration in assessing the property.

Under Section 24 of the General Tax Law the Supervisor or assessor is required to complete his roll on or before the first Monday in June. In other words, he has until that day in which to make the assessment. The reference to the second Monday in April which is found in Section 13 of the Act is, I believe, to be considered in connection with the assessment of personal property only and as fixing the residence of the owner for purposes of such taxation as of that date. It occurs to me that the Supervisor should value the property as of the time that he actually assesses it, that is, on the day that he inspects it for such purpose. In the particular instance, therefore, if this property is actually examined by the assessing officer on the first of June he should place on it such valuation as in his judgment represents its actual cash value on that day. If the assessment has been in fact made at an earlier date I do not think that it is the duty of the Supervisor to make a re-examination of the property although it is doubtless true that there is nothing in the law to prevent his so doing.

Trusting that these suggestions will cover your inquiry, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

SCHOOL LAW. Under Act 65 of 1909, as amended, a primary school district may not be compelled to pay \$20.00 tuition for a portion of a year's attendance at a high school on account of one of its eighth grade graduates.

June 19, 1916.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Capitol:

Dear Sir—Act 65 of the Public Acts of 1909, as amended, makes provision whereby primary school districts of the State are required to pay the tuition of the eighth grade graduates to any high school, in case proper application is made for such payment. It is specifically provided, however, that the amount thus paid shall not exceed "\$20.00 per pupil per year," unless a larger sum is appropriated by the voters of the school district at the annual meeting." I note from your inquiry of the 17th inst. that a so-called "trade school" is maintained in one of the cities of this State as a department of the high school. The tuition charged for courses therein is \$5.00 per month. You ask if a student, who has completed the eight grades in a primary school district, and who is otherwise entitled can take advantage of the provisions of the Act referred to, may compel such primary district to pay the full amount of \$20.00 for four months' attendance at this high school in the department indicated.

I am impressed that your question as stated must be answered in the negative. A statute of this kind imposing an extraordinary liability upon a primary school district must necessarily be strictly construed.

The language used in section 1 would seem to indicate beyond question that it was the intention of the Legislature to limit the amount of tuition that a district should be required to pay on account of one of its eighth grade graduates in attendance at a high school, to a sum not exceeding \$20.00 *for the school year*. It would seem to follow by necessary implication that a pupil attending a high school for a portion of the school year only may insist that the primary district pay a proportionate part of such sum. In other words the limit fixed must be construed in connection with reference to the time mentioned in the same clause. So viewed, the interpretation suggested would seem to be the only tenable one.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

WOMEN. May not be given the right to vote on municipal matters by charter.

June 21, 1916.

Miss Cynthia A. Green, County Commissioner of Schools, Charlotte, Michigan:

Dear Madame—Your communication of recent date, addressed to the Governor has been referred to this Department for reply. You have asked to be advised as to whether or not provisions may be inserted in a municipal charter adopted under the so-called Home Rule Act, which shall provide for the right of suffrage for women insofar as municipal matters are concerned.

Section 36 of the Home Rule Act provides that "no provision of any city charter shall conflict with or contravene the provisions of any general law of the State." The answer to your inquiry must, therefore, be determined by a reference to the Constitution and the statutes of the State. The Home Rule Act itself does not either expressly or by implication confer upon the electors, in the adoption of a municipal charter, the power to provide that electors thereunder may possess other or different qualifications than as set forth in the Constitution and the general laws pertaining to elections. The words "election" and "electors" as used in this measure must be construed in connection with other laws of the State, and in consequence as referring to action by those possessing the constitutional qualifications. A reference to Act 206 of the Public Acts of 1909 serves to strengthen the presumption that the qualifications of electors under municipal charters must be the same as are contained in the Constitution and general laws. The measure referred to authorizes women to vote in certain cases at elections held in any village, township, city or school district on questions involving the direct expenditure of public money or the issue of bonds. By necessary implication this must be regarded, I believe, as a declaration on the part of the legislature that women shall not be permitted to vote on municipal matters generally. In other words, women may not exercise the right of suffrage except as the same is conferred upon them in particular instances by legislative enactment adopted pursuant to provisions of the Constitution. Thus Act 206 of the Public Acts of 1909 was passed in compliance with section 4 of

Article III of the present State Constitution which declares that women having the qualifications of male electors should be permitted to vote on the questions and in the matter set forth in the act of the legislature.

As a general proposition the qualifications of electors are as set forth in section 1 of Article III of the State Constitution which limits the right of suffrage to male inhabitants possessing certain prescribed qualifications. This section is substantially the same as the corresponding section of the Constitution of 1850 under which the Supreme Court of the State in *Coffin v. Election Commissioners*, 97 Mich. 188, decided that it was not competent for the legislature to authorize women to vote at municipal elections. The court there had under consideration Act 138 of the Public Acts of 1893. Generally speaking, said measure was designed to place women who were able to read the Constitution in the English language on the same basis as male electors insofar as school, village and city elections were concerned. Referring to the constitutional provisions touching the qualifications of electors, the court held that the legislature had exceeded its power. I am impressed that this decision must be regarded as controlling. If it was not competent for the legislature under the Constitution of 1850 to authorize women to vote at municipal elections on matters arising under local charters, then it would seem to follow without question that under the present Constitution, and the acts of the legislature passed pursuant thereto, the electors of a particular municipality may not make provision for such suffrage in their charter. The provisions of the statute authorizing women to vote at school elections have been upheld on the theory that the matter was one entirely for the legislative control, but the decision of the court above cited clearly puts municipal elections on a different basis than are school elections. I am constrained to the opinion accordingly that any provision in a municipal charter attempting to provide for women suffrage on strictly municipal matters cannot be upheld because the State Constitution impliedly forbids the extension of the right of suffrage in such manner.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

MOTOR VEHICLE LAW. On the sale of a licensed motor vehicle, the vendee is entitled to have the license transferred to him.

June 21, 1916.

Hon. Coleman C. Vaughan, Secretary of State, Lansing, Michigan:

Dear Sir—You have recently requested my views with reference to a matter arising under the motor vehicle law of the State, involving the disposition of a license issued for a certain motor vehicle after such vehicle has been sold by the person on whose application the license was issued in the first instance. The proposition is governed by the provisions of section 11 of the act referred to; insofar as it is material on this point, said section reads as follows:

“Sale and Transfer. Upon the sale of a motor vehicle registered

in accordance with this section the vendor shall within ten days after the date of such sale notify the Secretary of State, stating the name and business address of the purchaser and the number under which such motor vehicle is registered: Provided, If any application be not received by the Secretary of State for a transfer of the license number by the vendor as above provided, the vendee, upon filing application may have the license transferred to him. Provided further, That the vendee may use the vendor's registered number for not to exceed ten days after sale or transfer."

Under the Act of 1909, the owner of a licensed motor vehicle who sold the same might, upon application within ten days, have his registration number transferred to another motor vehicle owned by him and not licensed. A similar provision was incorporated into the amendment of 1913 (Act 181 of 1913), which was declared to be unconstitutional in *Vernor v. Secretary of State*. It will be noted, however, that the section of the present motor vehicle law above referred to and quoted from does not confer such privilege on the vendor of a licensed machine. Quite possibly the fact that such law provides for the payment of a specific tax rather than for a registration fee may account for this omission. In other words, because of the nature of the burden imposed by the present act, the legislature took the view that the transfer of a license number from one machine to another ought not to be permitted. However, this may be, we are confronted by the fact that, as before indicated, the present law makes no provision by virtue of which the vendor of a licensed automobile may retain his license number and cause the same to be transferred to a new machine, or to another machine owned by him on which the specific tax has not previously been paid.

While the language of section 11 is somewhat obscure because of the fact that the language of the prior enactment was followed in part, it occurs to me that it is capable of but one interpretation. When a licensed motor vehicle is sold, the vendee, upon the making of proper application therefor is entitled to have the license transferred to him. Stated somewhat differently, he buys an automobile on which the specific tax has been paid and is entitled to have the benefit thereof. A contrary view is not only unwarranted by the language of the statute, but it is obvious that in particular instances it would result in requiring the specific tax to be paid on a certain machine more than once during the year while if the vendor were permitted to transfer his license to a new machine, the latter would escape the payment of such tax. Clearly neither result was contemplated by the legislature and in consequence the vendor in such a transaction was not granted in the enactment of the present motor vehicle law the privilege that had obtained under the Act of 1909. I believe that these general suggestions will cover the specific inquiry that you have submitted.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

HIGHWAY LAW. A street railway company possessing contractual rights by virtue of a local enactment of the legislature cannot be deprived of the same without its consent.

June 21, 1916.

Hon. Frank F. Rogers, State Highway Commissioner, Lansing, Michigan :

Dear Sir—I am advised that it is desired to improve the highway extending between the cities of Lansing and East Lansing in order to more adequately provide for the traffic between said cities. It appears that said road, or a portion thereof, has been taken over by the board of county road commissioners with the purpose in view of improving the same as a county road. At the present time the Michigan Railway Company owns and operates an extension of its line along this route. The tracks were laid by a predecessor of said company, the Lansing City Electric Railway Company, pursuant to the provisions of Act 371 of the Local Acts of 1893. Said measure provided in specific terms that the track should be constructed at a distance of fourteen feet from the south line of the highway. Further provision was made in case the highway should be subsequently widened. The location of the poles for the support of the trolley wire was also definitely indicated. I infer from the facts before me that the details as prescribed by the legislature were carefully observed by the Lansing City Electric Railway Company and its successors and the road was constructed accordingly. The question now arises as to the possibility of changing the location of the tracks of the Michigan Railway Company so that they will occupy the center of the highway rather than being situated at the side. I understand that such change is deemed desirable because of the large amount of traffic in both directions and also for the accommodation of adjoining property owners.

The Local Act referred to is in form an absolute and unconditioned grant of authority to the street railway company named therein to place its tracks where they now are. The right to compel the moving of the same in case conditions should change in the future was not reserved. The Michigan Railway Company has undoubtedly succeeded to all the rights, privileges and franchises of its predecessor and is, therefore, in position to insist that the rights granted by the legislature, which are I believe essentially contractual rights, should be respected. Obviously the provisions of the Local Act cannot now be disregarded and under the circumstances of the case, it occurs to me that any attempt to repeal same might be open to the objection that it would result in impairing the obligation of the contract. It is a fundamental proposition that a measure of this nature cannot be given the effect of depriving the State of any portion of its police power, but it scarcely seems that any exercise of such power is involved in the instant case.

If the Michigan Railway Company is willing to waive its rights under the local act, I am impressed that there is no legal objections to its so doing. Proceedings might then be taken for the obtaining of new franchises, which, of course, could provide in terms for the location of the tracks in the center of the highway, or elsewhere, as might be deemed desirable. In other words, while the railway company would seem to have contractual rights of which it may not be deprived under the cir-

cumstances of this case, it may voluntarily relinquish the same and submit to the desired arrangements. Quite possibly the matter can be arranged in this way.

I am returning herewith the copy of the Local Act submitted with your inquiry.

Very respectfully,
GRANT FELLOWS,
Attorney General.

Ca-v-O

TAXATION. The personal property of insurance companies organized under the laws of Michigan, including office furniture and fixtures, must be taxed as contemplated by Section eleven of the general tax law.

June 22, 1916.

Board of State Tax Commissioners, Lansing, Michigan :

Gentlemen—You have recently advised this Department that some question has arisen with reference to the assessment of office furniture and fixtures belonging to insurance companies. I note that such companies contend that they can not be assessed because of such property; and that if they may be placed on the rolls the result would be the addition of a considerable sum to the taxable property of certain municipalities of the State.

Section 3834 of the Compiled Laws of 1897, as amended, the same being Section 11 of the General Tax Law, contains the following clause:

“In computing the taxable property of insurance companies organized under the laws of this State, the value of the real property on which a company pays taxes shall be deducted from its net assets above liabilities as determined and shown by the last annual report of the Commissioner of Insurance, including in such liabilities the legal reserve required by the laws of this State or the regulations of the insurance department, and the remainder shall be the personal property for which the company shall be assessed.”

This positive provision of the statute must be regarded as pointing out specifically the procedure that shall be adopted in assessing all personal property belonging to insurance companies embraced within its scope, that is, insurance companies organized under the laws of Michigan. It was held by the Supreme Court, in *Mutual Life Insurance vs. Hartz*, 129 Mich. 104, that local assessing officers, in assessing the property of insurance must be guided by the report of the Commissioner of Insurance. It occurs to me that it must be presumed that the reports to the insurance department include all property of the companies, including office furniture and fixtures. If such items are omitted in any instance it would clearly seem that they should be required in order that the figures as prepared by the Commissioner of Insurance may indicate the sum on which the tax is to be paid, assuming that there is a taxable balance left after the contemplated deduction.

I would call our attention also to the case of *City of Yale vs. Mutual Fire Insurance Company*, 179 Mich. 254, where the provision of the statutes above cited was under consideration and where it was again indi-

cated that local assessors must be guided by the report as made by the Commissioner of Insurance. If such method of taxation results in leaving any considerable amount of taxable property off of the assessment roll, it would seem highly proper that the situation should be called to the attention of the next Legislature and such changes made as will permit the direct taxing of office furniture and fixtures of insurance companies without reference to their general assets and liabilities. Under the law in its present form, however, I am constrained to the opinion that the conclusion above suggested may not be avoided and that in consequence property of the character referred to belonging to insurance companies organized under the laws of this State may not be placed on the assessment roll.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

TAXATION. Automobiles assessed as part of a stock in trade may not be stricken from the roll when sold after the meeting of the Board of Review.

June 22, 1916.

Mr. Charles Craven, Supervisor, Frederick, Michigan :

Dear Sir—I note from your letter of the 19th inst. that in assessing the taxable property of your Township this Spring you placed on the roll certain automobiles held in stock by a dealer. It appears, however, that since the taking of the assessment and since the meeting of the Board of Review such motor vehicles have been sold and the purchasers have procured licenses from the State, paying the specific tax in each instance in accordance with the motor vehicle law of 1915. The question now arises as to whether said property should be stricken from the roll.

I am impressed that your question must be answered in the negative. The roll having been finally passed on by the Board of Review is not now subject to alteration either by the Board or by yourself as Supervisor. In other words, you have no authority to make any such changes as is suggested by your inquiry. Furthermore, the property was taxable at the time when you took the assessment and also when the Board met. The fact that, in the hands of subsequent purchasers, the automobiles became entitled to claim the exemption from taxation under the general law can not be permitted to affect assessments already properly made and approved.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

SCHOOL LAW. On the question of altering the boundaries of a district there must be joint action by the Boards of all the townships concerned.

June 22, 1916.

Mr. Herman Dehnke, Prosecuting Attorney, Harrisville, Michigan :

Dear Sir—Your letter of the 19th inst. with reference to the alteration of the boundaries of a certain school district, is at hand. I note that it is desired to take territory from a district situated wholly in one township and to add the same to a fractional district which embraces territory lying in four different townships. The point at issue is whether such action may be taken by the Township Board of the first township alone, or if there must be joint action of the Boards of all the townships concerned.

I am impressed that under the provisions of the statute relating to the alteration of the boundaries of school districts the proposed action must be a joint one. It would seem that both districts are affected and in any event the Legislature has attempted to safe-guard the rights and interests of both districts by requiring that all the township Boards shall have a voice in the matter. I would call your attention to an opinion given upon this question under date of November 25th, 1913, which you will find on page 361 of the annual report of this Department for the year nineteen fourteen. I assume that as Prosecuting Attorney of the County you have a copy of this report in your office.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

TAXATION. Automobiles assessed as a part of stock in trade should be stricken from the roll if sold and the specific tax paid thereon before the first of May. If sold after said day they may not be taken from the roll.

June 26, 1916.

Mr. Glen Smith, Prosecuting Attorney, Grayling, Michigan :

Dear Sir—Your communication of the 20th inst. requesting the views of this Department upon a question arising under the tax law of the State, is before me. It appears that in a certain instance automobiles held as part of a stock in trade were assessed by the Supervisor. Subsequently, and before the meeting of the Board of Review, the machines were sold and the vendees in each instance obtained licenses in accordance with the present motor vehicle law. Under such law motor vehicles on which the specific tax has been paid are exempt from any other taxation. The question has arisen in consequence as to whether or not the Board of Review should have stricken such property from the roll, the dealer having appeared and requested such action.

Section 17 of the general tax law provides that: "No change of location or sale of any personal property after the first day of May in any one year shall effect the assessment made in such year." At the time when the Supervisor assessed the automobiles they were, of course, tax-

able under the general law, no specific tax thereon having been paid. If the sale and payment of the tax in conformity with the motor vehicle law occurred before the first day of May it would seem to follow from the provisions of Section 17 that the vendor may properly claim relief from the assessment. On the other hand, if the machines were not sold, and the specific taxes were not paid until after the first of May, the assessment, being properly made, was not subject to change for the reason suggested. The Legislature undoubtedly fixed this date for the purpose of insuring stability with respect to the assessment of personal property.

In any event, I am impressed that no change could properly be made unless the person or persons concerned appeared before the Board of Review and presented the facts, together with their request, that the property be stricken from the assessment roll. This course is provided by law for the benefit of taxpayers in order to save them from unjust or illegal burdens; and any taxpayer who considers himself aggrieved by the assessment as made by the supervisor or other officer charged with that duty must avail himself of the statutory procedure if he desires to avoid the collection of the tax.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-pi-O

CORPORATIONS. A corporation created for the purpose of taking over the business of a co-partnership licensed as a "dealer" under Act 46 of 1915 may not have such license transferred to it.

June 26, 1916.

Michigan Securities Commission, Capitol:
Attention Mr. Cornelius.

Gentlemen—You have recently referred to this Department a communication addressed to you by Travis, Merrick & Warner, and have requested an opinion upon the matter therein referred to. It appears that a certain general co-partnership having its principal place of business in the City of Grand Rapids is at the present time a licensed dealer in stocks, bonds and other securities under the provisions of Act 46 of the Public Acts of 1915. It is desired, however, to organize a corporation to carry on the business of such co-partnership. The question arises in consequence as to whether or not the license may be transferred by the co-partnership to the corporation when formed, or if it will be necessary that the latter procure a new dealer's license.

The legislative enactment in question makes no provision for the transfer of a dealer's license under the circumstances suggested by the inquiry, or in fact under any circumstances. It was clearly the intention of the Legislature that such license should be regarded as personal to the individual, firm or corporation to which it might be granted. If a co-partnership might thus transfer to a corporation created for the purpose of taking over and continuing the business of dealing in stocks and bonds there would seem to be no reason why the license might not be likewise transferred to any corporation or to another co-partnership or individual. In contemplation of law the new corporation, even though

organized by the members of the firm now transacting the business, must be regarded as a separate and distinct legal entity. Such being the case it must necessarily follow that if the new corporation to be formed as indicated desires to carry on the business of a dealer in stock, bonds and other securities within the meaning of Act 46 of 1915, it must be registered in the same manner as is any other applicant for such privilege.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-pi-O

MOTOR VEHICLE LAW, CHAUFFEURS. One teaching another how to run an automobile, as a favor, and at the request of the new owner, is not a Chauffeur within the meaning of Section 1, Act 302, Public Acts of 1915.

June 28, 1916.

Mr. Ray Hart Prosecuting Attorney, Midland, Michigan:

Dear Sir—Under date of June 27th you have requested an opinion upon the construction of the word “chauffeur” as used in Section 1, Act 302 of the Public Acts of 1915. You ask, “does it include a man who is teaching another how to run an automobile as a favor, and at the request of the new owner?” In case of an accident under such circumstances “is the man running the machine criminally liable for running the machine without a license or without being registered.”

In reply will say that the term “chauffeur,” as used in the Act is defined to mean “any person operating a motor vehicle for hire, or as the employe of the owner thereof.” We have heretofore been called upon to construe this term but we have never gone so far as to hold one teaching another to drive an automobile to be a chauffeur, within the contemplation of the Act. As above indicated, a chauffeur is defined as one operating a motor vehicle for hire, or as the employee of the owner thereof. I believe it would be stretching the latter clause to an undue limit to hold that one engaged by another for the mere purpose of learning to drive an automobile, is a chauffeur and as such required to take out a license. Therefore the only criminal liability which would attach would be to the owner for driving his motor vehicle upon the highways without first securing the regular vehicle license as required by Section 12 of the Act.

Trusting that these suggestions may be of service to you, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Mo-k-O

TAXATION. EXEMPTION OF MICHIGAN STATE AGRICULTURAL SOCIETY. Michigan State Agricultural Society is not subject to fee demanded by Township for purpose of holding racing meets on the Fair Grounds.

June 28, 1916.

Mr. G. W. Dickerson, Secretary-Manager, Michigan State Fair, Detroit, Michigan:

Dear Sir—Under date of June 27th you have requested an opinion upon the following. You state that Greenfield Township has been in the habit of charging you \$25.00 per day for race meets of every character held on the Michigan State Fair Grounds. That they make this charge against your society as well as any other organization which might rent the track. You ask if the Township has the right to make this charge against the society.

You further state that the society is exempt from taxation and that it is not operated for private gain and that the receipts over and above the expenses must all be used for improvements on the property.

Replying to your communication will say that a similar question arose a little over a year ago in Kalamazoo relative to a license fee which the city sought to impose against the Armory Board under an ordinance which the city had adopted and which it had sought to enforce against said Board. In my opinion to the City Attorney it was said that:

“My understanding of the proposition is that the entertainments, etc., which are given in the Armory are solely for the purpose of producing part of the revenues by which the Armory is maintained. As you know, the State makes an annual allowance of \$1,000 for general maintenance. This, however, is never sufficient and the local Military Companies are obliged to find the larger part of the maintenance funds. It is altogether probable that the Armory Board is more often embarrassed for want of funds than otherwise. At all events, their entertainments, etc., are not for personal profit.”

It was there ruled that the Armory was exempt from taxation, both state and local, and that the exemption also applied to the matter of theatre licenses.

As I view it, the principle here involved is the same as the one in the Armory case. Both properties are exempt under State law from taxation. The profits which your society makes are, after expenses are paid, turned back into the society towards improvements on the property, no part being used for private gain. The two situations are so analagous that I am constrained to follow the view adopted in the opinion referred to and hold that the society is exempt from payment of the license fee demanded.

Trusting that these suggestions may be of assistance to you, I am,

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Mo-k-O

COUNTY FUNDS. Meaning of the term "general fund" as used in section 9 of Act 350 of 1913 is considered.

June 29, 1916.

Mr. Edward E. Barnard, Prosecuting Attorney, Grand Rapids, Mich.:

Dear Sir—Act 350 of the Public Acts of 1915 makes provision for the establishment by counties of public hospitals. Section 9 of said measure declares that "in counties exercising the rights conferred by this act, the board of supervisors may appropriate each year in addition to tax for hospital fund herein provided for not exceeding five per cent of this general fund for the improvement and maintenance of any public hospital so established." I understand that action is contemplated in Kent County having for its purpose the construction and maintenance of an institution of the class provided for. It appears, however, that there is no county fund that is commonly designated as a "general fund" in your county, but that an amount is raised each year under a budget system for the defraying of ordinary county expenses, and that various sums are likewise raised for special purposes, in accordance with the laws of the State.

It is the view of this Department, as suggested to you over the telephone, this afternoon, that the expression "general fund" as used in the section above quoted must be taken to mean that fund which is raised for general purposes as contra-distinguished from the sums levied for special purposes. I think that there can be no question but that the legislature had in mind the fact that each county of the State raises by taxation each year money for the meeting of its general expense items and that the term "general fund" was intended to refer, and must in consequence be taken as referring, to such sum. The proposition may be stated somewhat differently by classifying county funds as general and special, and regarding all moneys as constituting a part of the former that are not levied and collected for any of these latter. I think that such a construction is in accordance with the legislative intent in the enactment of the measure under consideration.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

SCHOOL LAW. A wholesale text book company may not extend more favorable terms with reference to the time of payment to one purchaser than are extended to purchasers generally.

June 29, 1916.

Hon. Fred L. Keeler, Superintendent of Public Instruction, Lansing, Michigan:

Dear Sir—I have before me your letter of recent date enclosing a communication addressed to you by a representative of Ginn & Company of Chicago, Ill. The question is therein raised as to whether or not a publisher of school text books may deviate in a particular instance

from its usual custom of giving sixty or ninety days time on bills and accept payment without interest in three annual installments without becoming liable under the bond required by Act 315 of 1913 to extend the same rates to other districts in Michigan requesting them. You have asked that I give you my views upon this point.

The legislative enactment cited was intended to insure, in my opinion, that school text books should be sold throughout the State at a uniform price and under uniform conditions; and that wholesale dealers should not maintain a higher price in Michigan for any text book than is charged therefor elsewhere in the United States. Bearing in mind the obvious intent of the legislature and the purpose sought to be accomplished, I am constrained to the opinion that no wholesale dealer may adopt the procedure suggested above in a single instance without becoming liable to extend the same favor generally throughout the State. As pointed out in the letter addressed to you by the representative of Ginn & Company, the practical result of such a plan is to offer text books to a particular purchaser at a more favorable rate than the same are intended to be generally sold. Clearly if a sale is made to one purchaser on sixty days time and another sale of the same commodity is made to a second purchaser on two years time, there is a discrimination in favor of the latter. As before suggested, however, Act 315 of 1913 was intended to prevent discriminatory practices in the sale of school textbooks. There would in consequence seem to be no conclusion that is tenable except that the permitting of such a deviation would be repugnant to this act. The terms of the bond required to be given by each wholesaler must in consequence be regarded as necessitating that if such favorable terms are extended in one case, they must likewise be extended to other purchasers that may request them.

Respectfully yours,

GRANT FELLOWS,

Attorney General.

Ca-v-O

SCHOOL LAW. The clerk of the county commissioner of schools should be paid on the order of the county clerk addressed to the treasurer.

June 29, 1916.

Mr. Carl R. Henry, Prosecuting Attorney, Alpena, Mich.:

Dear Sir—Section 8 of Act 147 of the Public Acts of 1891 as amended authorizes the county commissioner of schools in counties having one hundred or more school rooms to appoint a clerk. Such clerk is to perform duties as specified by the commissioner; and in accordance with section 10 of the same act, as amended, shall receive such compensation as shall be determined by the county commissioner. The first section cited imposes a limitation, in the sixth paragraph thereof, upon the amount that shall be paid to the clerk.

I note that in the County of Alpena there are over one hundred school rooms including those in the City of Alpena. If the city system is excluded in the making of a computation there are less than one hundred school rooms. The question in consequence arises as to whether or not

under the circumstances suggested, the county commissioner of Alpena County may be properly allowed the services of a clerk. This question is, I understand, involved in the case of *Fannie v. Wexford*, which was submitted to the Supreme Court during the June term. The precise issue there involved was whether or not the school rooms in the City of Cadillac should be counted in determining the compensation to which the county commissioner of Wexford should be entitled. It occurs to me that the same considerations that are deemed by the court to be controlling in that case will likewise determine the point that you suggest. In other words, if city school rooms are to be counted in computing the commissioner's salary, it would seem that they must likewise be counted in determining whether he may or may not appoint a clerk. In view of the pendency of this case, I scarcely feel like expressing any opinion in answer to your first inquiry. In all probability, a decision will be handed down at an early date.

In reply to your second inquiry, I would call your attention to the following provision found in section 10 of the act above cited:

"The compensation of members of the county board of school examiners and of any clerk appointed by the county commissioner shall be paid monthly from the county treasury upon such examiner or clerk filing with the county clerk a certified statement of his or her account which shall give in separate items the nature and amount of the services for which compensation is claimed."

I believe that it must be deemed to follow from this clause of the act that the filing of the statement provided for is the only prerequisite necessary to obtain the compensation as fixed in compliance with the statute. Inasmuch as such statement is required to be filed with the county clerk, the inference is that the latter official shall draw his order on the county treasurer for the amount due. While such action is not provided for in specific terms, it would seem to be the logical conclusion to be drawn from the language above quoted. Had it been the intention to authorize payment without the necessity of an order, it is quite likely that it would have been specified that the statement should be filed with the county treasurer. Some resulting duty on the part of the county clerk would naturally seem to follow from the requirement as expressed. The claims for expenses incurred by the clerk of the county commissioner of schools must undoubtedly be passed on and paid in the same manner as are similar bills presented by the commissioner himself.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

COUNTY PROPERTY. A reversion of title of land deeded to a county on condition that it be used as a site for county buildings does not result from permitting of establishment of tennis court for public use thereon.

June 29, 1916.

Mr. Willis L. Lyon, Prosecuting Attorney, Howell, Michigan:

Dear Sir—You have recently requested my views with reference to a situation that has arisen in your county in connection with the use of certain public grounds in a specified manner. It appears that the site of the present court house and county jail was deeded to the county in 1843, the instrument of conveyance containing the following condition:

"To be used and occupied as a site for the county buildings whenever the same shall be erected in said county of Livingston, or as a part of the public grounds connected therewith, provided always that if the premises hereby conveyed shall for any cause hereafter be vacated as the site for the County buildings or public grounds connected therewith and shall cease to be used or occupied for the purposes hereinbefore expressed, that then and in such case all the estate herein and hereby conveyed shall revert to and revest in the grantors."

I understand that permission has been granted by the board of supervisors for the erection and maintenance of a tennis court on a portion of the land thus conveyed and that some question has arisen as to the possibility of this action resulting in a reversion of title to the original grantors by virtue of the condition set forth in the clause of the deed above quoted.

It does not occur to me that any such result as is suggested can be plausibly urged as following from the permission granted by the board. It will be noted that the interest in the lands covered by the instrument of conveyance to the county can revert only if the same shall for any cause be vacated as a site for the county buildings or public grounds connected therewith. Of course, this land will continue to be the site of the county buildings notwithstanding the establishment of the public tennis court. Stated somewhat differently, no reversion of title can be claimed to the original grantors or their heirs unless and until the site conveyed to the county is vacated and no longer occupied for the purposes for which it was received. It is quite possible that the board of supervisors might be restrained from permitting any part of the public property to be used for strictly private purposes; but, this is, of course, aside from the question of a possible reversion of title in accordance with the expressed conditions of the deed. In any event it does not appear from the statement of fact before me that any private use of public property is contemplated. Rather it would seem that the action of the board referred to was merely designed to permit the public to use a portion of the court house site not otherwise occupied for recreation. It does not occur to me that there is any legal objection to such use. The

character of the property as a part of the public grounds belonging to the county is in no way altered. In other words, the tennis court is still a part of the "public grounds" connected with the actual site of the county buildings.

Respectfully yours,
GRANT FELLOWS,
Attorney General.

Ca-v-O

SCHEDULE "M."

Abstract of the semi-annual reports of the Prosecuting Attorneys for the fiscal year ending June 30, 1916.

Offenses charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number nolle prossed.	Number discharged on examination.	Number escapes, etc.
Abandonment, or desertion of wife and children	203	99	5	16	28	23	32
Abduction	4	1		1		2	
Abortion	7	2	1		1	3	
Accessory after the fact	1				1		
Adultery	130	21	10	24	9	45	21
Advertising law, violation of	3	2					1
Animals, cruelty to	241	186	19	6	7	11	12
Malicious killing of	7	4	1			2	
Horse, unfit for work	2	2					
Horse, unlawfully unhitching and driving away	13	11				2	
Horse, over driving and killing, speeding	2	1		1			
Maiming and disfiguring	1	1					
Harboring vicious dog, sheep killer	8	3	1				4
Arson	29	18	6		2	3	
Attempting to commit	2	2					
Assault and battery	3,914	2,447	455	210	134	110	558
Assault and robbery	4	4					
Assault, felonious	157	44	14	4	6	71	18
Assault, simple	39	31	2	2	4		
Assault with intent to commit indecent liberties, murder and rape. (See murder or rape)	167	60	11	3	19	68	6
Automobile law, violations of, (See motor vehicle).							
Barber's law, violation of	3	3					
Not closing shop on Sunday	4	2	1				1
Unclassified	3	3					
Bestardy	290	59	3	11	27	17	173
Secreting infant at birth	1	1					
Bigamy	16	12		1		3	
Blue sky law, violation of	1					1	
Boats, fastenings, breaking and removing	8	4	2	2			
Bottles, unclassified, violation of law	30	21			2		7
Breaking and entering	14	11	1	1			1
(Other than dwellings) in day time	6	6					
Buildings, stores, factories, etc., (other than dwelling house) with intent to commit felony	3	2			1		
Buildings, stores, factories, granary, etc., (other than dwelling houses) in the night time	132	95	13	2	9	11	2
dwelling house in day time	21	14	2			5	
Dwelling house in night time	28	22	2			4	
Saloon, in night time	2	2					
Attempt to break and enter a store in night time	25	12	2	1	6	4	
Attempt to break and enter store in day time	5	4	1				
Unclassified	29	18	3		2	4	2
Burglary	183	152	4	2	15	8	2
Accessory, after the fact, carrying burglary tools	1	1					
Attempt to commit	1	1					
In store, warehouse	2	2					
Burglary and larceny	6	6					

SCHEDULE "M."—Continued.

Offenses charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number nolle prossed.	Number discharged on examination.	Number escapes, etc.
Chastity, imputing want of to female.....	10	4	1	2	2		1
Children, cruelty to.....	3	1				2	
Neglect of.....	19	11	2				6
Delinquency, contributing to.....	22	19					3
Cigarette law, violation of.....	40	32	4		1	1	2
Cohabitation, unlawful.....	10	4		2		1	3
Lewd, and lascivious.....	49	23			7	14	5
Concealed weapons, carrying of.....	411	306	11	5	15	50	15
Conducting business under assumed name.....	2						2
Condemnation proceedings.....	1	1					
Conspiracy, to defraud.....	2	1					1
Contempt of court.....	7	6	1				
Crime, imputing to another.....	3	3		1			
Defrauding.....	4	2	1	1			
Dental, violations of.....	2	2					
Disorderliness, classified as:							
Begging.....	968	954	12				2
Drunkenness.....	9,235	9,098	27	49	19	13	29
Drunkenness on interurban car.....	67	66			1		
Drunkard and tippler.....	166	163			2		1
Second offense.....	100	98		1			1
Third offense.....	53	53					
Fortune telling.....	8	8					
Noise and disturbance.....	26	24		1			1
Non-support of family.....	1,384	551	65	45	40	16	667
Vagrancy.....	2,116	2,060	16	6	10	17	7
Unclassified.....	3,884	3,376	322	39	40	34	74
Disorderliness, juvenile, classified as burglary.....	2	2					
Unclassified.....	28	24	2		1		1
Drunkenness not under disorderliness.....	4,414	4,287	15	59	23	18	12
Election law, violation of.....	6	6					
Illegal voting.....	1					1	
Illegal registration.....	1			1			
Unclassified.....	5	2	1		1	1	
Embezzlement.....	162	68	10	24	15	23	22
Including larceny by conversion.....	2			2			
Of contract property.....	1	1					
Of mortgaged property.....	5	2		2	1		
Employment agency, operating without license.....	3	1					2
Entering without breaking in daytime, building, dwelling, store, etc., to commit crime.....	2		2				
Unclassified.....	10	2	4	3	1		
Entering without breaking, to commit crime, night time.....	1					1	
Enticing female under sixteen years of age from home.....	3	2				1	
Escape, aiding prisoner, unclassified.....	4	4					
Exposure of person, see under indecency.....							
Extortion.....	1	1					
False weights and measures, violation of.....	19	14	2		3		
False and malicious accusation.....	1					1	
False pretenses, classified as:							
Obtaining goods by.....	16	7	1	1	2		5
Obtaining money by.....	72	25	4	18	10	9	6
Unclassified.....	115	56	2	12	13	13	19
Felony, compounding.....	1						1
Fire setting.....	1	1					
Careless.....	1		1				
Fire arms, aiming, careless use of, etc.....	12	8	1	1	1	1	
Fire marshal's law, violation of.....	1	1					
Forgery.....	106	78	4	4	9	6	5
Fraud.....	4	4					
Obtaining transportation, advertising.....	11	9	2				
Fugitive from justice.....	67	5			2		60

ATTORNEY GENERAL.

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SCHEDULE "M."—Continued.

Offenses charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number nolle prossed.	Number discharged on examination.	Number escapes, etc.
Game, fish and forestry law, violation of, classified as:							
Song birds, killing.....	3	1	1				1
Deer hunting on enclosed land.....	3				3		
Deer, hunting and killing with dogs.....	1	1					
Killing without license, or out of season.....	24	20			3		1
Skins, having possession unlawfully.....	4	4					
Fish, having in possession undersized.....	38	34	4				
Fish, brook trout, less than 8 in.....	3	3					
Spearing.....	8	3		5			
Fishing, illegally, or out of season.....	86	83			1	2	
In inland lakes with nets.....	2	2					
Trout or black bass in possession out of season.....	6	6					
Proceeding to destroy gill nets.....	3	3					
With nets, dynamite.....	7	5			2		
Selling illegal fish.....	3	3					
Game, killing out of season, or illegally.....	7	7					
Hunting without license.....	42	39	2			1	
Muskrat, killing out of season.....	2	2					
Muskrat, trapping, molesting, etc.....	1	1					
Quail or partridge, killing and capturing out of season.....	2	2					
Rabbits, killing by use of ferrets.....	27	26				1	
Squirrel, killing out of season.....	6	6					
Unclassified.....	1,275	1,118	48	29	40	19	21
Gaming, classified as:							
Keeping gaming room, devices, etc.....	45	13	1	14	6	6	5
Lottery conducting.....	3	1	1		1		
Unclassified.....	89	72		11	3	3	
Gambling.....	44	35	9				
Hawkers and peddlers law, violations of, peddling without license.....	23	19		3	1		
Health law, violation of, classified as:							
Carcass of animal, leaving unburied.....	2	2					
Unclassified.....	10	9	1				
Highway laws, violation of.....	5	2	1		1		1
Hotels, boarding houses, etc., law for protection of keepers of, violation of classified as:							
defrauding hotel keeper, etc.....	240	169	3	18	10	6	34
Intent to defraud hotel keeper.....	16	12			4		
Unclassified.....	18	10	2	4	1		1
Impersonation, false representation.....	2	1				1	
Incest.....	8	7				1	
Indecency, classified as:							
Crime against nature.....	1	1					
Exposure of person.....	27	21	3	1	2		
Language in presence of women and children.....	274	235	4	12	8	10	5
Liberties.....	28	14	3	1	3	4	3
with female child.....	19	10	1	1	1	4	2
with male child.....	4	3			1		
Pictures, exposing of.....	1	1					
Gross leuciviousness.....	3	1	1		1		
Unclassified.....	21	18		2			1
Injuries to property, garden and growing crops, trees, vines, etc.....	6	5					1
Insulting language, using.....	26	19			5	1	1
Insurance laws, violation of.....	2		2				
Jail breaking.....	18	16			2		
Kidnapping.....	8	2	3		1		2
Labor law, violation of.....	19	11	4		1		3
Factory law, violation of.....	1	1					
Relating to employment of women.....	1	1					
Working more than 9 hours, maximum work hours.....	3	3					
Unclassified.....	6	5					1

SCHEDULE "M."—Continued.

Offenses charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number nolle prossed.	Number discharged on examination.	Number escapes, etc.
Larceny, classified as:							
Attempted.....	10	8					2
From building, railroad car, store, etc.	2	2					
From store, shop, office, etc., in day time.	44	33		1	4	6	
From store in night time.	8	7					1
from dwelling:							
in day time.....	38	33		1	1	2	1
in night time.....	1					1	
From person.....	150	49	14	3	18	52	23
attempt to commit.....	13	6	3			2	2
Of electric light by tapping wires, gas.	1	1					
Personal property:							
A horse, cow or dog.....	12	8	1	3			
Timber.....	3	2				1	
By conversion.....	5	5					
By bailor.....	112	47	13	1		14	37
By bailee.....	1						1
Over \$25.00.....	56	42	1		8	5	
Under \$25.00.....	276	234	8	4	22	3	5
Simple, trick.....	1,879	1,492	104	38	52	32	161
Grand.....	471	251	36	2	23	124	35
Compound.....	1	1					
Unclassified.....	1,379	1,094	92	29	32	42	90
Libel, criminal.....	4	3				1	
Liquor law, violations of, classified as:							
Keeping saloon open after hours.....	8	4		1	1	1	1
On legal holiday.....	3	2					1
On Sunday.....	50	28	1	1	6	5	10
Furnishing liquor to intoxicated person.	8	7				1	
Furnishing liquor to drunkard.....	4	2		2			
Selling liquor without having paid license tax.	85	43	3	2	8	18	11
Druggist selling liquor as a beverage without registering.	3				3		
Selling liquor to Indian.....	2	2					
After having been forbidden.....	2	2					
Unclassified.....	201	92	24		30	49	6
Livery keepers law, violation of:							
defrauding.....	12	9					3
Local option law, violation of.....	30	16		10		3	1
Manslaughter.....	602	460	28	3	35	51	25
	30	9	12		4	5	
Marriage law, violations of:							
Medical law, violations, classified as:	1				1		
Practicing medicine without certificate (license).....	4	3		1			
Unclassified.....	15	7	5		1	2	
Milk, adulterations, see under Pure Food Laws.							
Military law, violation of.....	2	2					
Minors:							
Billiard room or pool room, allowing to remain in.....	12	11	1				
Liquor, furnishing to.....	20	15				5	
Liquor, selling to.....	6	3	1		1	1	
Tobacco, cigarettes, etc., smoking, selling to.....	30	24			3	2	1
Stolen goods, junk, purchasing from.....	13	10	1	1		1	
Mortgage law, violations of, advertising sale.	1				1		
Motor vehicle law, violations of:							
Chauffeur, failure to pay tax.....	2	2					
Cycle speeding.....	9	9					
Not displaying lights.....	36	33	2		1		
Not displaying number, not having number.....	65	64				1	
Automobile, violation of, company defrauding.....	33	11	5	2			15
Automobiles, unlawful driving away.....	309	203	16	10	26	29	25
Speed limit violations.....	377	359		6	4		8
Running without license.....	3	3					
Unclassified.....	949	883	6	10	15	19	16

SCHEDULE "M."—Continued.

Offenses charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number nolle prossed.	Number discharged on examination.	Number escapes, etc.
Murder, classified as:							
Assault with intent to	15	9	3		1	1	1
Attempt to	1	4			1		
First degree	5	1			1		
Second degree	1						
Unclassified	128	96	16		6	9	1
Noxious weed law, violation of	8	8					
Nuisance, maintaining	3	2	1				
Officers, offenses against:							
Assaulting	1	1					
Impersonating	2				2		
Resisting and obstructing	38	16	2	2	5	12	1
Optometry law, violation of	4	4					
Ordinances:							
City, violation of	74	70	1	2			1
Village, violation of	1			1			
Fast driving	1						1
Unclassified	21	16					5
Pandering	10	3	2		1	4	
Parole, violation of	50	50					
Peace, breach of, etc.	5,635	5,036	431	5	10	1	152
Exciting disturbance, etc.	47	43		3		1	
Surety to keep peace	47	25	2	3	1	7	9
Affray	4	2			2		
Peddling without license. (See Hawkers and peddlers law.)							
Perjury	20	8	4	1	2	4	1
Pharmacy law, violation of	12	7			1		4
Plumbing law, violation of	13	7	3		1		2
Poison, exposing of, with intent to kill	8	6	1	1			
Mingling with food with intent to kill	3				1	2	
Poisoning, animals	2					2	
Poolroom, keeping open after hours, etc.	9			1			
Prize fighting	2	8		2			
Probation	3	3					
Profanity	11	8			3		
Property, offense against, classified as:							
Destroying, maliciously	125	66	6	14	14	14	11
Injuring, maliciously	80	49	2	1	3	7	18
Unclassified	1	1					
Property—chattel mortgaged:							
Disposing of	17	12			1		4
Fraudulently	3			3			
Removing of, aiding and abetting	1			1			
Property, contract, violation of	1	1					
Disposing of fraudulently	13	13		3	1		1
Removing, unlawfully	30	5	2	1	4	8	10
Property, personal:							
Destroying maliciously	32	21	1	6	2		2
Disposing of fraudulently	3	2	1				
Injuring, maliciously	12	9		2			1
Straw, burning	1	1					
Property, real, injury to, malicious:							
Dwelling, building	2	1		1			
Fence	2	2					
School property, destroying	1	1					
Defacing	1	1					
Trees (shade) wanton destruction of	2	1			1		
Property, stolen, removing	5	1					
Concealing	4	3		1	4		
Receiving	187	119	23	6	8	16	15

SCHEDULE "M."—*Concluded.*

Offenses charged.	Number prosecuted.	Number convicted.	Number acquitted.	Number dismissed on payment of costs.	Number repleaded.	Number discharged on examination.	Number escapes, etc.
Prostitution.....	1	1					
Common.....	1,191	1,012	152	7	1	2	17
Inducing female to enter house of.....	3	3					
Keeping house of ill fame.....	280	234	23	3	6		14
Public meeting, disturbing.....	6	6					
Pure food law, violation of.....	36	30	6				
Selling diseased meat.....	18	13	2		2		1
Milk adulterating, selling.....	10	10					
Unclassified.....	22	20		1	1		
Quarantine law, violation of.....	6	4			2		
Railroad law, violation of:							
Boarding a moving train.....	27	27					
Entering a freight car to obtain carriage.....	122	119			1	1	1
Breaking and entering freight car.....	32	22	2		2	6	
Breaking and entering depot in day time.....	2	2					
Breaking and entering depot in night time.....	2	2					
Attempt to wreck train, putting obstruction on track.....	2	1				1	
Trains, jumping on, stealing rides, etc.....	83	79					4
Trains, exciting disturbance on.....	6	6					
Drinking on train.....	69	67			1	1	
Unclassified.....	18	15		2	1		
Rape.....	120	68	16		12	14	10
Assault with intent to commit.....	14	8	1	1	2	1	1
Carnal knowledge of female under 16 years of age.....	15	6	4		3	2	
Robbery, classified as:							
from person.....	1					1	
Highway.....	9	6			1	1	1
Armed.....	34	13	2		2	16	1
Unarmed.....	68	17	6		7	27	11
Assault with intent to rob.....	28	19	4		2	2	1
Attempt to commit.....	2	2					
Unclassified.....	6		1	1	1	3	
School law, violation of:							
Not sending children to school.....	88	65		12	4	4	3
Unclassified.....	66	45	1	1	13	4	2
Search warrant.....	53	16	1				36
Seduction.....	22	3	1	2	5	8	3
Slander, criminal.....	217	122	29	10	3	7	46
Sodomy, attempt to commit.....	6	2	1			2	1
Sunday law, violation of:							
Keeping places of business open.....	2	1	1				
Selling goods.....	24	24					
Theatre, motion picture law violation.....	4	4					
Threats, malicious, to do bodily harm, etc.....	81	28	12	4	9	5	23
Timber, unlawful cutting of.....	2	1	1				
Tobacco law, violation of.....	1	1					
Trespass, classified as:							
Cutting and removing timber.....	1	1					
Hunting on land without permission.....	2	2					
On garden.....	4	4					
Unclassified.....	25	19	3		1	1	1
Unlawfully disposing of dead body.....	1	1					
Uttering and publishing, forged instrument or order.....	67	46	2		4	7	8
Violation of Corrupt Practices Act.....	2	1					1
Violation of Junk Dealers Statute.....	2	2					
Veterinary law, violation of.....	6	5	1				
Practicing surgery without license.....	1			1			
Totals.....	48,995	40,552	2,317	902	1,067	1,371	2,786

SCHEDULE "N."

Recapitulation of the semi-annual reports of Prosecuting Attorneys of their respective counties during the fiscal year ending June 30, 1916.

Counties.	Number prosecuted.			Number convicted.			Number acquitted.			Number dismissed on payment of costs.			Number nolle prossed.			Number discharged on examination.			Number settled, etc.		
	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.
Alcona.....	13	8	21	10	6	16	5	1	1	1	1	1	1	1	1	2	1	1	2	1	2
Ayer.....	129	133	262	111	117	228	4	1	5	4	1	5	1	1	1	4	4	8	5	6	11
Allegan.....	137	110	247	130	104	234	1	2	3	6	4	10	1	1	1	1	1	3	5	3	9
Alpena.....	42	49	91	28	34	62	3	1	4	4	11	13	1	1	1	6	6	6	1	3	3
Antrim.....	35	30	65	23	23	46	2	1	3	6	7	13	1	1	1	2	2	2	1	1	1
Arenac.....	25	20	45	21	13	34	2	1	3	1	5	6	1	1	1	1	1	1	1	1	1
Barnes.....	123	66	179	110	50	160	1	1	2	4	4	1	2	1	3	7	4	11	1	1	1
Barry.....	49	66	105	42	47	89	1	2	3	1	1	1	1	1	4	5	3	8	1	1	1
Bay.....	621	465	1,086	547	413	960	32	27	59	17	22	39	3	1	2	6	1	7	18	1	19
Benzie.....	28	9	37	20	5	25	1	1	2	1	1	1	1	1	1	1	1	1	4	1	5
Berrien.....	408	243	656	293	184	477	5	4	9	27	8	35	10	8	18	1	3	4	72	41	113
Braich.....	42	38	78	33	24	57	3	3	6	12	5	17	2	6	8	2	1	3	2	1	3
Calhoun.....	408	300	708	357	265	622	5	6	11	15	6	21	1	1	2	22	18	40	8	4	12
Cass.....	177	188	365	147	173	320	2	3	5	7	1	8	12	2	14	1	9	10	9	4	13
Charlevoix.....	67	49	116	61	34	95	1	1	2	3	1	1	1	1	6	1	9	10	6	6	6
Cheboygan.....	64	45	109	61	35	96	1	2	3	5	1	1	1	1	4	5	2	2	1	1	2
Chippewa.....	106	87	193	91	51	172	2	1	3	5	1	5	9	6	15	1	2	2	1	1	2
Clare.....	12	13	25	8	13	21	2	1	3	1	1	1	1	1	1	2	1	2	1	1	1
Climon.....	64	33	97	62	31	93	2	2	4	3	3	6	2	2	4	1	1	1	1	1	1
Crawford.....	89	93	182	86	90	176	2	1	3	3	3	6	1	1	2	1	1	1	1	1	1
Delta.....	167	99	266	127	85	212	12	6	18	14	3	17	11	2	13	1	1	2	2	2	4
Dickinson.....	280	256	536	248	241	489	1	1	2	14	5	19	1	1	1	12	4	16	5	4	9
Eaton.....	184	216	400	161	200	361	1	4	5	9	3	12	9	9	18	9	9	16	5	4	9
Emmet.....	46	31	77	39	25	64	1	1	2	13	3	16	1	1	2	1	1	9	4	4	4
Genesee.....	446	405	851	367	324	691	6	3	9	13	13	26	40	12	52	8	38	46	13	15	28

SCHEDULE "N."—Concluded.

Counties.	Number prosecuted.			Number convicted.			Number acquitted.			Number dismissed on payment of costs.			Number sold procured.			Number discharged on examination.			Number settled, etc.		
	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.
Glavin.....	32	19	51	27	18	45	1	0	1	19	25	44	22	2	24	3	15	5	1	1	1
Goebie.....	373	338	711	311	304	615	6	2	8	1	1	2	22	1	24	1	15	5	1	1	1
Grand Traverse.....	159	61	220	150	54	204	4	5	9	1	1	2	1	1	2	6	3	9	1	11	12
Grotrick.....	87	54	141	74	36	110	2	1	3	2	2	4	2	1	3	0	6	6	1	11	12
Ellendale.....	97	61	158	83	50	133	4	3	7	2	2	4	2	1	3	0	6	6	1	11	12
Houghton.....	655	724	1,380	447	538	985	31	26	57	41	73	114	4	2	6	93	53	146	39	42	81
Huron.....	51	60	111	49	41	90	5	5	10	28	10	38	3	7	10	12	14	26	8	3	11
Ingham.....	590	435	1,025	529	396	925	3	1	4	1	1	2	1	1	2	16	10	26	1	1	1
Ionia.....	309	319	628	289	305	594	3	1	4	1	1	2	1	1	2	16	10	26	1	1	1
Iosco.....	17	10	27	13	9	22	1	1	2	1	1	2	1	1	2	3	1	4	1	1	1
Iron.....	167	202	369	74	104	178	15	18	33	32	20	52	8	28	36	34	31	65	4	1	5
Isabella.....	48	48	96	36	41	77	2	2	4	5	4	9	4	4	8	7	4	11	1	1	1
Jackson.....	1,351	1,286	2,637	1,129	1,196	2,325	3	6	9	39	59	98	78	64	144	32	26	58	1	1	1
Kalamazoo.....	317	252	569	307	232	539	2	5	7	1	1	2	5	14	19	1	1	2	2	2	2
Kalamazoo.....	28	2	30	28	2	30	1	1	2	1	1	2	1	1	2	1	1	2	1	1	1
Kent.....	702	572	1,274	622	471	1,093	11	24	35	17	3	20	29	38	67	2	8	10	21	28	49
Keweenaw.....	55	25	80	37	16	53	5	5	10	7	7	17	4	4	8	3	2	5	1	1	1
Lake.....	14	9	23	14	8	22	1	1	2	1	1	2	1	1	2	1	1	2	1	1	1
Leape.....	122	119	241	107	107	214	6	3	9	1	4	5	6	5	11	2	1	2	1	1	1
Leelanau.....	6	6	12	6	5	11	1	1	2	1	1	2	1	1	2	1	1	2	1	1	1
Levenaw.....	143	119	262	120	103	222	5	2	7	2	3	5	12	6	18	2	4	6	2	3	4
Livingston.....	61	34	95	53	31	84	2	1	3	1	1	2	1	1	2	2	2	4	3	3	7
Lucas.....	41	24	65	39	24	63	2	2	4	3	3	6	3	3	6	3	5	8	1	1	1
Macomb.....	146	101	247	142	97	239	2	1	3	1	1	2	1	1	2	3	5	8	1	1	1
Manistee.....	130	111	241	112	103	215	4	4	8	1	2	3	8	3	10	2	1	3	5	5	1
Marquette.....	393	234	627	366	251	617	4	4	8	16	10	26	8	3	11	2	1	3	1	1	1
Menominee.....	94	132	226	88	132	220	6	5	11	1	1	2	15	8	23	1	6	6	5	3	8
Menominee.....	65	49	114	50	40	90	1	1	2	1	1	2	11	4	15	1	6	6	5	3	8
Menominee.....	106	70	176	82	56	138	2	1	3	1	5	6	22	3	25	2	3	5	3	5	8

SCHEDULE "O."

List of Prosecuting Attorneys, June 30, 1916, with name of County Seats and Postoffice Addresses.

Counties.	County seat.	Prosecuting attorneys.	Postoffice.
Alcona	Harrisville	Herman Dehnke	Harrisville.
Alger	Munising	David E. Simmons	Munising.
Allegan	Allegan	Perle L. Fouch	Allegan.
Alpena	Alpena	Carl R. Henry	Alpena.
Antrim	Bellaire	Thomas D. Meggison	Central Lake.
Arenac	Standish	Roy J. Crandell	Standish.
Baraga	L'Anse	Hubert A. Brennan	L'Anse.
Barry	Hastings	Thomas Sullivan	Hastings.
Bay	Bay City	James L. McCormick	Bay City.
Benzie	Honor	Walter E. Daines	Honor.
Berrien	St. Joseph	Chester P. O'Hara	St. Joseph.
Branch	Coldwater	Charles U. Champion	Coldwater.
Calhoun	Marshall	Robert H. Kirschman	Battle Creek.
Cass	Cassopolis	Otis Huff	Marcellus.
Charlevoix	Charlevoix	Rolfie L. Lewis	Charlevoix.
Cheboygan	Cheboygan	Homer H. Quay	Cheboygan.
Chippewa	Sault Ste. Marie	Thomas J. Green	Sault Ste. Marie.
Clare	Harrison	Joseph F. Bowler	Clare.
Clinton	St. Johns	Edward W. Fehling	St. Johns.
Crawford	Grayling	Glen Smith	Grayling.
Delta	Escanaba	Herbert J. Rushton	Escanaba.
Dickinson	Iron Mountain	Raymond Turner	Norway.
Easton	Charlotte	Emerson R. Boyles	Charlotte.
Emmet	Petoskey	Henry S. Sweeney	Petoskey.
Genesee	Flint	Clifford A. Bishop	Flint.
Gladwin	Gladwin	John C. Shaffer	Gladwin.
Gogebic	Bessemer	James A. O'Neill	Ironwood.
Grand Traverse	Traverse City	Ward B. Connine	Traverse City.
Gratiot	Ithaca	Ora L. Smith	Ithaca.
Hillsdale	Hillsdale	Frank M. Hall	Hillsdale.
Houghton	Houghton	William J. Galbraith	Calumet.
Huron	Bad Axe	Xenophon A. Boomhower	Bad Axe.
Ingham	Mason	William C. Brown	Lansing.
Ionia	Ionia	Herbert C. Hall	Ionia.
Iosco	Tawas City	Albert W. Black	East Tawas.
Iron	Crystal Falls	August J. Waffin	Iron River.
Isabella	Mt. Pleasant	Frank M. Burwash	Mt. Pleasant.
Jackson	Jackson	Nathan A. Bailey	Jackson.
Kalamazoo	Kalamazoo	Frank F. Ford	Kalamazoo.
Kalkaska	Kalkaska	Ernest C. Smith	Kalkaska.
Kent	Grand Rapids	Edward N. Barnard	Grand Rapids.
Keweenaw	Eagle River	W. Abner Crebassa	Ahmeek.
Lake	Baldwin	Ray Trucks	Baldwin.
Lapeer	Lapeer	Herbert W. Smith	Lapeer.
Leelanau	Leland	Ralph E. Hughes	Suttons Bay.
Lenawee	Adrian	Leland F. Bean	Adrian.
Livingston	Howell	Willis L. Lyons	Howell.
Luce	Newberry	Alexander L. Sayles	Newberry.
Mackinac	St. Ignace	Prentiss M. Brown	St. Ignace.
Macomb	Mt. Clemens	Allen W. Kent	Mt. Clemens.
Manistee	Manistee	Howard L. Campbell	Manistee.
Marquette	Marquette	Michael J. Kennedy	Ishpeming.
Mason	Ludington	Henry G. Reek	Ludington.
Mecosta	Big Rapids	John E. Dumon	Big Rapids.
Menominee	Menominee	Fred H. Haggerson	Menominee.
Midland	Midland	Ray Hart	Midland.
Missaukee	Lake City	A. W. Penny	Cadillac.
Monroe	Monroe	Clifton M. Kolb	Monroe.
Montcalm	Stanton	Frank W. Miller	Stanton.
Montmorency	Atlanta	Elmer G. Smith	Atlanta.

SCHEDULE "O."—*Concluded.*

Counties.	County seat.	Prosecuting attorneys.	Postoffice.
Muskegon.....	Muskegon.....	Harris E. Galpin.....	Muskegon.
Newaygo.....	White Cloud.....	William J. Branstrom.....	Fremont.
Oakland.....	Pontiac.....	Frank L. Doty.....	Pontiac.
Oceana.....	Hart.....	Earl C. Pugsley.....	Hart.
Ogemaw.....	West Branch.....	Earl R. Chapin.....	West Branch.
Ontonagon.....	Ontonagon.....	John Jones.....	Ontonagon.
Osceola.....	Hersey.....	William F. Umphrey.....	Evart.
Oscoda.....	Mio.....	C. H. W. Snyder.....	Tawas City.
Otsego.....	Gaylord.....	Wirt Barnhart.....	Gaylord.
Ottawa.....	Grand Haven.....	Louis H. Osterhous.....	Grand Haven.
Presque Isle.....	Rogers.....	Christian Oppenborn.....	Rogers.
Roscommon.....	Roscommon.....	Hiram R. Smith.....	Roscommon.
Saginaw.....	Saginaw.....	Bird J. Vincent.....	Saginaw, E. S.
Sanilac.....	Sandusky.....	Fred A. Farr.....	Sandusky.
Schoolcraft.....	Manistique.....	Carey W. Dunton.....	Manistique.
Shiawassee.....	Corunna.....	Seth T. Pulver.....	Owosso.
St. Clair.....	Port Huron.....	Charles S. Stewart.....	Port Huron.
St. Joseph.....	Centerville.....	Arthur N. Culp.....	Constantine.
Tuscola.....	Caro.....	Henry H. Smith.....	Caro.
Van Buren.....	Paw Paw.....	Earl L. Burhans.....	Paw Paw.
Washtenaw.....	Ann Arbor.....	Carl A. Lehman.....	Ann Arbor.
Wayne.....	Detroit.....	Chas. H. Jasnowski.....	Detroit.
Wexford.....	Cadillac.....	Ray E. Bostick.....	Cadillac.

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